



Managing text messages under the Public Records Act

A Review by the Chief Archivist

8 September 2015

New Zealand Government

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Executive summary and actions planned

1. James Shaw MP requested that the Chief Archivist look into a potential breach of the Public Records Act 2005 (the Act) in the deletion of text messages from the Prime Minister's mobile phone.
2. After reviewing the information available, the Chief Archivist established a Recordkeeping Review (the Review) into the public recordkeeping advice, support and systems that the Prime Minister should be able to rely upon in order to carry out his obligations under the Act. The advice, support and systems available to other Ministers have also been considered in the context of this Review.
3. The Review has provided an opportunity to clarify that Ministers of the Crown are public offices under the Act. The records, including text messages, that Ministers create and receive when operating in their official capacities are public records and should be managed as such.
4. The recordkeeping advice, support and systems available for the Prime Minister were examined by the Review and found to be inadequate. The confusion caused by section 42 of the Act led Archives New Zealand to focus mainly on the deposit of Ministers' papers rather than the full range of their recordkeeping obligations. This in turn had an impact on the scope of recordkeeping support provided for Ministers by Ministerial and Secretariat Services (MaSS) and the Cabinet Office.
5. The Prime Minister's current recordkeeping practice for text messages can be viewed as pragmatic, and is likely to comply with the Act. There is no evidence of wilful or negligent disposal of records without authority. The Act does not require that all public records are retained. General Disposal Authority 7¹ allows for the disposal of public records that are of facilitative, transitory and/or short-term value.
6. This report includes the Chief Archivist's actions and recommendations for improvements to the recordkeeping advice, support and systems for the Prime Minister (and other Ministers). This will ensure that all Ministers can efficiently carry out their official business and fulfil their statutory responsibilities.
7. The Review provides an opportunity to improve public recordkeeping by providing advice on managing text messages for all public offices and local authorities.

Actions by Archives New Zealand

8. Archives New Zealand:
 - a) has advised the Prime Minister and other Ministers of their responsibilities under the Public Records Act when acting in their official capacity as Ministers of the Crown

¹ See GDA 7: *Facilitative, Transitory, and Short-Term Value Records*
<http://www.archway.archives.govt.nz/ViewEntity.do?code=DA576>

- b) has provided initial advice on the management of text messages for the Prime Minister and other Ministers to meet the requirements of the Act
- c) is revising and improving advice available to Ministers and staff supporting them to clearly cover the full scope of Ministers' responsibilities under the Act
- d) is extending generic advice on the management of text messages to other public offices as required.

Recommendations to others

9. The Chief Archivist recommends that:

- a) MaSS develops and implements improved public recordkeeping advice and systems for staff supporting Ministers that comply with the Act including:
 - advice to cover the full scope of Ministers' responsibilities under the Act, including practical ways in which support staff can assist Ministers
 - systems that are capable of maintaining and appropriately disposing of public records created and received by Ministers in their official capacity
 - working with the Department of Internal Affairs' records management specialists to update the disposal authority for Ministers to cover all public records in any format created or received by Ministers.
- b) Cabinet Office revises Chapter 8 of the Cabinet Manual, with Archives New Zealand support, to provide clearer guidance on the Act and its application to Ministers.

Introduction

Why was a review initiated?

10. The Review related to information provided in a request made by James Shaw MP on 28 November 2014 that the Chief Archivist look into what he considered to be a potential breach of the Public Records Act 2005 (the Act) in the deletion of text messages from the Prime Minister's mobile phone.
11. Mr Shaw's request covered the period that the Prime Minister had been in office (that is, between November 2008 and November 2014) and whether there had been any change in the Prime Minister's practices over time. He also asked that the Chief Archivist provide direction and guidelines for Ministers relating to those circumstances in which text messages can be deleted and those in which they must be maintained. A copy of Mr Shaw's original request is included in this report as Appendix A.
12. An initial assessment of the matters raised in Mr Shaw's request indicated that a review could assist in:
 - clarifying if the Prime Minister, acting in his capacity as a Minister of the Crown, is a public office as defined in section 4 of the Act. This would mean that text messages created and received by the Prime Minister in this capacity were public records and should be managed in accordance with the Act
 - providing useful information for other Ministers who also use text and other forms of transient messaging in their official capacity
 - improving public recordkeeping by providing useful advice to other public offices and public sector organisations.
13. This Review was therefore initiated on 22 December 2014.

Response to request

14. This Review has been undertaken under section 11(1)(b)(vi) of the Act, which includes as a function of the Chief Archivist the monitoring and reporting on the compliance of public offices with the Act.
15. The Review terms of reference (included in this report as Appendix B) focus on:
 - any recordkeeping policies and procedures for managing text messages supplied by relevant public offices during the period concerned
 - whether the requirements of the Act have been met
 - the application of existing authorised disposal schedules
 - the adequacy of advice or guidance provided to the Prime Minister
 - any other matters that the Chief Archivist considered appropriate to review.

16. The Review did not include an attempt to recover deleted text messages created or received by the Prime Minister because the examination of individual text messages would not result in any improvement of public recordkeeping. Instead, the Review is forward-looking and focuses on identifying areas where improvements to advice and support will result in better public recordkeeping practices.

Ministers are public offices

17. As this report will indicate, the status of Ministers and their records had lacked clarity since at least the passing of the current Act in 2005. The Review provided an opportunity to look at this issue again.
18. Ministers (including the Prime Minister) are part of the Executive branch of Government and are therefore public offices under the Act.² The Act applies when Ministers are operating in their official capacities as Ministers of the Crown.

Private records and information are out of scope

19. Records that are not public records as defined by the Act are out of scope of the Review. These include:
- records created or received by the Prime Minister in his role as a parliamentary or political party leader
 - records created or received as a private individual
 - personal text messages and messages not related to the Prime Minister's official capacity, even though they may have been created or received on Ministerial phones and devices
 - information or data held by private persons or organisations.

Other public offices within scope of the review

20. The Review covered those public offices providing advisory and administrative support to the Prime Minister:
- the Department of Internal Affairs, through its business group MaSS
 - the Department of the Prime Minister and Cabinet (DPMC)
 - the Parliamentary Service.
21. Archives New Zealand is also within the scope of the Review. This is because it provides advice on the implementation of the Act to public offices. Archives New Zealand is also a business group of the Department of Internal Affairs.

² See the definition of "public office" in section 4 of the Act. The Department of Internal Affairs, the Department of the Prime Minister and Cabinet, and the Parliamentary Service are also public offices as defined by section 4

Information-gathering from public offices and others

22. Reports from the administrative heads of three public offices were requested under section 31 of the Act and received, namely:
 - the Chief Executive of the Department of Internal Affairs, in relation to MaSS
 - the Chief Executive of DPMC
 - the General Manager, the Parliamentary Service.
23. These reports were followed up with information-gathering interviews with officials from the Office of the Chief Executive of DPMC, the Cabinet Office and MaSS. In addition, current Archives New Zealand staff who had provided advice to these public offices during the relevant period were interviewed. The Prime Minister also provided information about his current practice for the management of text messages.

Conduct of the Review

24. The Review was undertaken:
 - using powers under section 31 of the Act, which allows the Chief Archivist to request a report from public offices on recordkeeping practices
 - consistent with the purpose and scope of the Act, including the independent role of the Chief Archivist (section 12) and the recordkeeping responsibilities of other parties
 - with a fair process that accorded with the principles of natural justice.
25. To manage any potential perceptions of a conflict of interest arising from Archives New Zealand undertaking a review that included MaSS, another business group of the Department of Internal Affairs, the following arrangements were made. An independent quality assurer, Robert Buchanan, public law practitioner, was appointed. The independent quality assurer's report is included in this report as Appendix C. A review team was established separate from Archives New Zealand staff providing business-as-usual advice to public offices within the scope of the Review.

Section A: Managing public records

26. This section details the expectations for the management of public records.

Why good records management is important

27. In a society such as our own, instruments exist to support open and transparent democracy. In New Zealand, the Public Records Act 2005 is one of these instruments. It sits alongside other laws, such as the Official Information Act 1982.
28. The Act establishes the framework for managing public records so that the public can be assured of their integrity. This enables the Government to be held accountable by ensuring that full and accurate records are created and maintained³ and, if no longer required, appropriately disposed of. The framework also ensures that records of long-term value are available for current and future New Zealanders by providing for their preservation and accessibility.
29. All records have some value, but “value” is a fluid concept that can, and will, change over time. There is a cost to the retention, maintenance, migration, preservation and accessibility of records. The emphasis is therefore on the retention of records of long-term value rather than short-term or transitory value.
30. The Act does not require that all public records be retained. It enables the Chief Archivist to maintain a flexible, pro-active regime for making decisions about the appropriate management of all records, their retention period and final disposal. It also involves balancing the costs of retention against the risks if the records were no longer accessible or destroyed.

The key features of the Public Records Act

31. Public records should be managed so that there is trust in their integrity and reliability and they can be used for a range of purposes.
32. Sections 17 and 18 of the Act underpin effective public records management by:
- setting out the responsibilities to create and maintain full and accurate records in accordance with normal, prudent business practice
 - providing that only the Chief Archivist may authorise disposal of a public record (the only exception is where another Act requires disposal (section 18(2))).
33. Minimum requirements for the management of records by public offices are outlined primarily in the *Records Management Standard for the New Zealand Public Sector* set by the Chief Archivist.⁴

³ See purposes of the Act in section 3

⁴ See Records Management Standard for the New Zealand Public Sector, July 2014
<http://www.records.archives.govt.nz/managing-records2/records-managment-standard/principles/>

A public record is format-neutral

- 34. A record means information, whether in its original form or otherwise, that is compiled, recorded or stored in any form.
- 35. A public record means a record or class of records, in any form, in whole or in part, created or received by a public office in the conduct of its affairs. This means that the content and context of a record is of relevance and not the device it is carried on, nor the form of the information, nor its format. New devices and technologies evolve, but the records remain public records.

Routine disposal of records is authorised

- 36. Under the Act, disposal actions are taken when the record is no longer required by the public office. Disposal of a record may include the transfer of its control to another public office or to Archives New Zealand or the destruction of a record. Disposal authority may be given either in Disposal Authorities (DAs) issued to public offices to dispose of specified classes of public records or in General Disposal Authorities (GDAs) covering common types of records.
- 37. It is recognised that for government to operate efficiently and effectively, public offices need to be able to dispose of certain types of records as part of normal business practice. GDA 7 exists for disposal of public records that are of facilitative, transitory and/or short-term value.⁵
- 38. There is also a specific authority for the disposal of routine public records in any format created or received by Ministers and Associate Ministers (DA 214). This disposal authority was developed for use by staff supporting Ministers leaving office and covers only those records identified for destruction. It was issued in November 2005, in order to carry the provisions of an old authority into the era of the new Act.⁶

Transfer and access regime for Ministers' papers

- 39. Under section 42 of the Act, records created or received by a Minister while holding office may be offered to Archives New Zealand (or an approved repository of Archives New Zealand). If this occurs, both control of public access to, and ownership of, the Minister's papers remains with the Minister or former Minister for life.

How the Act should work in practice

- 40. As a public office, the Prime Minister has direct responsibilities to create, maintain and dispose of public records (including any text messages created or received) when operating in his official capacity as a Minister. Most public offices have staff responsible for records and information management and systems. The Prime Minister should be able to rely upon policies, processes, support and systems to effectively manage public records for him.

⁵ See *GDA 7: Facilitative, Transitory, and Short-Term Value Records*, <http://www.archway.archives.govt.nz/ViewEntity.do?code=DA576>

⁶ See *Disposal Authority for Ministerial Records*, <http://archway.archives.govt.nz/ViewEntity.do?code=DA214>

Many factors influence information management practice

41. When managing public records, public offices balance a number of factors. These factors include determining whether information is (or is not) official information, managing security concerns and device data storage limits, and understanding how the Act applies.
42. Managing security of records is important. For the Prime Minister, this connects with his personal security, for example, protecting travel information held on devices. Guidance on handling sensitive information, such as the *New Zealand Information Security Manual*,⁷ is consistent with good recordkeeping practice. The core requirements to appropriately create, maintain and dispose of public records remain.

⁷ Government Communications Security Bureau, *New Zealand Information Security Manual*; version 2.3, May 2015, <https://protectivesecurity.govt.nz/home/new-zealand-information-security-manual/>

Section B: Current advice, support and practice

43. This section looks at the advice and support provided to the Prime Minister, and his current practice for managing text messages.

Archives New Zealand's advice supports public recordkeeping

44. Archives New Zealand is the primary source of advice on public recordkeeping (included in this report as Appendix D). The recordkeeping policies, processes and systems of all public offices are built on the strength of this guidance. The advice includes:
- relevant legislation
 - recordkeeping standards
 - records management good practice
 - disposal of records, including transfer to the Chief Archivist.
45. Archives New Zealand's advice is device-neutral, medium-neutral and format-neutral. It applies irrespective of the record's medium or format. The record could be, for example, a document, a text, an image, sound, speech or data that is compiled, recorded or stored on any format or medium (such as written on any material, film, tape or electronic/digital) on any form of device. However, there is some format-specific advice on managing text messages and email in the "frequently asked questions" on Archives New Zealand's website.⁸
46. Since before the timeframe of this Review, Archives New Zealand has provided regular advice and training to Ministerial staff on the "archiving" or deposit of Ministers' papers under section 42 of the Act. This advice and training has focused mainly on the deposit of and access to Ministers' papers rather than the full range of recordkeeping requirements under the Act.
47. In 2014 a revision of the advice went so far as to state incorrectly that "Ministers' papers are not considered public records under the Act but form a separate category".⁹ This error was made largely because Archives New Zealand processed Ministers' papers as though they were private records.

⁸ See <http://archives.govt.nz/advice/ask-question>

⁹ *Depositing Ministers' papers with Archives New Zealand*, Senior Private Secretaries training presentation, 7 July 2014

MaSS supports and advises Ministers and their offices

48. MaSS has a direct role in providing support for all Ministers. However, MaSS considered it was not responsible for the development of policies and processes for managing text messages in order to give effect to Ministers' statutory responsibilities. Therefore this has left staff supporting Ministers to develop and operate their own procedures and systems.
49. MaSS reported that it does not provide recordkeeping advice. The Ministerial intranet refers Ministers and their staff to Archives New Zealand advice and the Cabinet Manual for information about their public recordkeeping responsibilities and the deposit of Ministerial records. MaSS commented that the guidance available focused on paper records and did not cover electronic records adequately.
50. MaSS also reported that it was not directly involved in managing text messages on behalf of the Prime Minister, or in providing recordkeeping advice to the Prime Minister. MaSS commented that it is, in many instances, both impractical and unreasonable to expect Ministers to capture and record all of their transitory communications.

DPMC maintains its own records and the Cabinet Manual

51. DPMC's corporate services function provides the records management system within DPMC. DPMC reported that, if the Prime Minister passes on or seeks information on a matter that has arisen in a text message, then DPMC would manage that information as a public record.
52. The Cabinet Office is also part of DPMC and responsible for maintaining the Cabinet Manual. The Cabinet Office seeks advice and guidance from agencies that are expert on specific issues within it (including Archives New Zealand on "archiving").
53. Chapter 8 of the Cabinet Manual guides Ministers on their management of official information, including the disposal or "archiving" of Ministerial records. The most common transactions between Archives New Zealand and Ministers' offices are to do with the deposit of Ministers' papers with the Chief Archivist under section 42.
54. In April 2008, Chapter 8 was updated in an attempt to address the confusion created by the provisions for Ministers' papers in section 42. However, it uses the new terms "Ministerial records" and "Ministerial papers", rather than "Ministers' papers". The new terminology was evidently intended to have the same meaning as Ministers' papers but may have compounded the existing confusion.¹⁰ Chapter 8 also focused on paper recordkeeping and was not in keeping with the format-neutral approach of the Act.

¹⁰ Ministerial records are papers created or received by Ministers in their capacity as Ministers of the Crown. The Cabinet Manual identifies these papers as falling broadly into three categories:

- Cabinet and Cabinet committee records (agendas, papers, and minutes)
- Ministerial papers and files
- departmental papers and files.

See <http://www.cabinetmanual.cabinetoffice.govt.nz/8.86>

The Parliamentary Service supplies mobile phones

55. The Parliamentary Service provides Members of Parliament with mobile phones for use in their capacity as Members and as Ministers. The Parliamentary Service has confirmed that, while providing phones for Ministers' use, it does not advise on recordkeeping policies and procedures for managing text messages.

Prime Minister's current practice

56. The Prime Minister's current approach for managing text messages has been confirmed as:
- “I receive a large volume of text messages on my cellphone which I routinely delete for security purposes. It is not my practice to conduct substantive ministerial business by text message. The vast bulk of text messages I receive in my ministerial capacity relate to minor administrative matters such as transportation arrangements, diary rescheduling or drawing my attention to an email I may need to read. Occasionally I may ask officials for information which is then provided to me usually in the form of an email or briefing note – the content of which is retained for the public record. I do not use a private cellphone.”¹¹
57. Despite the Prime Minister not being made fully aware of his specific responsibilities under the Act, or the use of relevant Disposal Authorities, the Prime Minister's management of his text messages can be viewed as pragmatic. While this may occur for security reasons rather than recordkeeping purposes, the Prime Minister's current approach does not indicate any wilful or negligent disposal of records without authority. Most text messages are transitory which means their content is already authorised for disposal under GDA 7. The Prime Minister's practice therefore appears likely to be compliant with the Act in relation to most text messages.

Conclusion

58. The advice and support available for the Prime Minister on recordkeeping from Archives New Zealand, MaSS and DPMC was inadequate.
59. The Prime Minister's current recordkeeping practice for text messages can be viewed as pragmatic. It appears likely to comply with the Act and relevant disposal authorities.

¹¹ Letter from Prime Minister's Chief of Staff to Chief Archivist, 13 July 2015

Section C: Findings

60. This section considers the implications of the inadequacies in the advice available to the Prime Minister and to those providing support for his recordkeeping.

Section 42 is confusing

61. Those providing advice and support for the Prime Minister's recordkeeping responsibilities have not found the Act easy to interpret, particularly section 42, which sits awkwardly within the Act overall. There is no specific mention in the Act of Ministers of the Crown being public offices. However, Ministers of the Crown, including the Prime Minister, are public offices under the Act by virtue of being part or an instrument of the Executive branch of Government.
62. Archives New Zealand's advice during the period reviewed was developed on the basis that Ministers' papers formed a distinct category and did not address the question of whether Ministers were public offices. Other public offices providing administrative support for Ministers had no reason to question whether this view was correct. Therefore, there was also an impact on recordkeeping by staff supporting Ministers because MaSS and the Cabinet Office referred them to Archives New Zealand's advice.
63. The confusion created by section 42 has been considered in the past, in particular by the working group that was responding to the 2006 Smith Review.¹² The Chief Archivist and the Cabinet Office led a working group to address the recommendations of the 2006 Smith Review, and developed options to amend the Act to clarify that papers created or received by Ministers when operating in their official capacities as Ministers of the Crown are public records. These options were considered by Ministers in early 2008 but were not progressed.

Better advice and support could have been provided

64. Archives New Zealand needed to have a clearer understanding of the Act and to have conveyed this to the Prime Minister and those supporting him. Archives New Zealand's approach has been unduly influenced by the focus on the deposit of Ministers' papers under section 42.
65. Amendments to Chapter 8 of the Cabinet Manual were made in 2008. However, the Manual continued to focus on the disposal and storage of paper "Ministerial records". This focus meant that it had no advice for Ministers on the full range of their recordkeeping responsibilities under the Act. It also helped to move attention away from other forms of public records, including text messages, created or received by the Prime Minister in his official capacity.

¹² See the report by M. P. (Mel) Smith to the Chief Archivist and Chief Executive, Archives New Zealand, *Report on Review of Processes and Systems for Managing Ministers' Papers and Security Classified Information deposited at Archives New Zealand*, September 2006

66. MaSS did not consider that it had a role in providing the Prime Minister (and other Ministers) with recordkeeping advice and referred to Archives New Zealand's advice and the Cabinet Manual.
67. The Act's format-neutral foundation does not preclude format-specific advice. Current recordkeeping advice available is either format-neutral or focuses on paper records and does not fit with the complex, mobile environment in which the Prime Minister operates. During the period covered by the review, format-specific advice was not sought or developed for the Prime Minister.
68. As a consequence, the Prime Minister was not advised that text messages he created or received in his official capacity were public records, or that he needed to observe sections 17 and 18 of the Act.
69. The Prime Minister's current recordkeeping practice for text messages appears likely to comply with the Act and can be viewed as pragmatic. The nature of most text messages makes it likely that public records were generally disposed of correctly. However, recordkeeping practice should be compliant by deliberate design to ensure that public records are managed in accordance with the Act.
70. The difference between the Prime Minister's current practice and a deliberate decision process that would be compliant with the Act is small but important. The divergence from the process required by the Act is illustrated in Appendix E of this report. It is possible, though unlikely, that some public records may not have been managed in accordance with the Act because the Prime Minister was not made aware of his specific responsibilities.

Conclusion

71. The Prime Minister should have been better supported. The recordkeeping advice and support available to him, in his capacity as a public office, and the staff supporting him were inadequate. The confusion caused by section 42 was a contributing factor.
72. The Prime Minister was not made aware of his full responsibilities under the Act, and the systems he should have been able to rely on to meet the responsibilities of a public office were inadequate. As a result, it is possible that some public records may not have been managed in accordance with the requirements of the Act.

Section D: Opportunities to improve public recordkeeping

73. This section outlines opportunities to improve advice on and support for recordkeeping for the Prime Minister, other Ministers, staff supporting them, and other public offices.

Improved advice and support must be provided

74. It is the proper role of the Public Service to advise Ministers of their legal obligations and provide them with the support they need to be able to comply.
75. Gaps exist in Archives New Zealand advice, the Cabinet Manual and MaSS records management support. The status of Ministers as public offices under the Act requires improved public recordkeeping advice and support. This includes:
- Archives New Zealand clarifying for the Prime Minister, and other Ministers, that they are public offices for the purposes of the Act and, therefore, that sections 17 and 18 apply to records (including, but not limited to, text messages on mobile phones) that they create or receive when operating in their official capacity as Ministers of the Crown
 - Archives New Zealand clarifying that Ministers' papers are a special subset of public records. Ministers' papers are records created or received by Ministers in their official capacity as Ministers of the Crown. When Ministers' papers are deposited with the Chief Archivist, special provisions for controlling access to these records can apply, but this does not override the other requirements of the Act
 - Archives New Zealand providing format-specific advice where a need is recognised to respond to changes in technology that are affecting public recordkeeping
 - Archives New Zealand and MaSS providing advice to Ministers about how to deal appropriately with text messages they create or receive that are within the scope of the Act as well as information in other formats (while also meeting security and device storage concerns)
 - MaSS developing and implementing improved systems for staff supporting Ministers for the maintenance and appropriate disposal of public records
 - MaSS working with the Department of Internal Affairs' records management specialists to create a new retention and disposal schedule for authorisation by the Chief Archivist that covers all Ministers' public records, not just those of low value, to assist Ministers and staff supporting them
 - Cabinet Office revising Chapter 8 of the Cabinet Manual, with Archives New Zealand's support, to provide clearer guidance on the Act and its application to Ministers.

How text messages should be managed

76. Compliance with the Act requires that a text message created or received by a Minister in his or her official capacity is treated as a public record. If the message's content is facilitative, transitory and/or of short-term value, then it may be deleted under an existing disposal authority. However, if the content of the message requires action or is potentially of longer-term value and needs to be retained, then its content should be transferred to the Minister's support staff to manage. In summary Ministers should:
- **identify** text messages created or received that contain information that is a public record, and
 - **assess** the value of the information, and
 - **delete** a text message if the information contained in it is only facilitative, transitory and/or short-term value (under GDA 7 or DA 214), or
 - **transfer** the information to staff responsible for providing recordkeeping support.
77. To support this approach, Archives New Zealand, MaSS and Cabinet Office are currently working together to develop advice and implement changes recommended in this report. Initial advice on Ministers' core recordkeeping responsibilities and on the management of text messages is being released at the same time as this report. Further advice and guidance on the full scope of the recordkeeping responsibilities of Ministers and their supporting staff will be progressively released.

Clarifying the Act

78. Addressing how section 42 fits within the Act through improved advice will provide initial assistance for Ministers and staff supporting them. However, the Review has highlighted the difficulty of interpreting how section 42 interacts with the core recordkeeping responsibilities of the Act. There is a risk that, even with improved advice, these difficulties will not be resolved. The work completed in this Review lays the foundation for further consideration of clarifying amendments to the Act, if an opportunity arises.

Wider implications

79. Improved advice and support should be provided for all Ministers and not restricted to the Prime Minister. This is because other Ministers are public offices as well and are likely to be operating similarly to the Prime Minister with respect to recordkeeping.
80. In addition, other public offices are also likely to be operating on a similar basis for the management of texts (but are not affected by any considerations under section 42). Generic advice on managing text messages for all public offices and local authorities is also to be released by Archives New Zealand.

Conclusion

81. Text messages created or received by a public office are public records and should be managed as such. The appropriate management of text messages will ensure that all public offices, including the Prime Minister, will meet the requirements of the Act.

82. These changes, together with improved advice and support from Archives New Zealand and other relevant public offices, will strengthen public recordkeeping.

Section E: Recommendations

83. Archives New Zealand:

- a) has advised the Prime Minister and other Ministers of their responsibilities under the Public Records Act when acting in their official capacity as Ministers of the Crown
- b) has provided initial advice on the management of text messages for the Prime Minister and other Ministers to meet the requirements of the Act
- c) is revising and improving advice available to Ministers and staff supporting them to clearly cover the full scope of Ministers' responsibilities under the Act
- d) is extending generic advice on the management of text messages to other public offices as required.

84. I recommend that:

- a) MaSS develops and implements improved public recordkeeping advice and systems for staff supporting Ministers that comply with the Act including:
 - advice to cover the full scope of Ministers' responsibilities under the Act, including practical ways in which support staff can assist Ministers
 - systems that are capable of maintaining and appropriately disposing of public records created and received by Ministers in their official capacity
 - working with the Department of Internal Affairs' records management specialists to update the disposal authority for Ministers to cover all public records in any format created or received by Ministers.
- b) Cabinet Office revises Chapter 8 of the Cabinet Manual, with Archives New Zealand support, to provide clearer guidance on the Act and its application to Ministers.

Next steps

85. I will ensure that the actions listed above that Archives New Zealand needs to take are implemented quickly and comprehensively.
86. To ensure the continuing development of good recordkeeping practices, I intend to report specifically on improvements in advice and support services provided to the Prime Minister and other Ministers in my 2015/16 report on the state of recordkeeping within public offices.



Marilyn Little
Chief Archivist

8 September 2015

Appendix A: Request by James Shaw MP



James Shaw
Green Party MP



Green
Green Party of Aotearoa New Zealand

28 November 2014

Office of the Chief Archivist
PO Box 12-050
Wellington
New Zealand

Dear Ms Little,

I wish to draw your attention to the matters raised in the media recently with regards to the keeping of public records by the Prime Minister and his department.

On 27 November, Steven Joyce, in replying for the Prime Minister during question time, told Parliament that the Prime Minister "definitely deletes all his text messages". In subsequent questions, Mr Joyce stated the nature of the discussion meant that John Key was acting as the Prime Minister, rather than the leader of the National Party, when replying to texts message.

Under such circumstances, we believe these text messages are a public record as defined by s4 of the Public Records Act 2005 ("the Act"). Therefore, there is a duty to maintain these text messages under s17 of the Act. Disposal of these texts messages is contrary to s18 of the Act. As such, we believe there might have been an offence committed under s61 of the Act.

In light of these circumstances, we ask you to investigate the matter under s29 of the Act.

Further, we ask the Chief Archivist to provide direction and guidelines relating to circumstances in which text messages can be deleted and in what circumstances they must be maintained.

We ask this issue be addressed with urgency given that a number of messages have already been deleted and it is in the public interest for public offices to maintain public records.

Queries may be directed to my staff, either Andrew Campbell (04) 817-6793 or Nirupa George (04) 817-6767.

Yours sincerely,

James Shaw
Green Party MP

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Appendix B: Recordkeeping Review terms of reference

1. Background

Based on statements relating to the deletion of text messages made by the Prime Minister in the House of Representatives on 27 November 2014, James Shaw MP requested an investigation regarding what he considers to be a potential breach of the Public Records Act 2005. The request was to cover the period that the Prime Minister has been in office, and whether there has been any change in his practices over time. Mr Shaw has also asked for the Chief Archivist to provide direction and guidelines on the deletion or retention of text messages.

2. Review

The review will examine:

- any recordkeeping policies and procedures for managing text messages, supplied by relevant public offices during the period concerned
- whether the requirements of the Act have been met
- the application of existing authorised disposal schedules
- the adequacy of advice or guidance provided to the Prime Minister, and
- any other matters the Chief Archivist considers appropriate to review.

The use of private mobile phones and devices and personal text messages on ministerial phones and devices are explicitly excluded from the scope of this review.

3. Mandate

Under s31(a) of the Act, the Chief Archivist may give notice in writing directing the administrative head of a public office to report on any specified aspect of its recordkeeping practice.

4. Contact for enquiries

The Chief Archivist will not comment while the review is under way, but will publish a final report when the review is complete.

Appendix C: Independent quality assurer report



Managing Text Messages under the Public Records Act: Quality Assurance Statement

1. The Chief Archivist engaged me in December 2014 to provide independent quality assurance for her review of the Prime Minister's record keeping practices in relation to mobile phone text messages. In particular, she sought assurance about:
 - (a) her understanding of her mandate and powers to undertake a review;
 - (b) the steps she took to maintain her independence;
 - (c) the process she used for the scoping and conduct of the review; and
 - (d) the quality of her review report.
2. In my opinion:
 - (a) The review was carried out in a careful and considered manner, with full cognisance of the Chief Archivist's powers under the Act and with appropriate advice about how the Public Records Act 2005 should be interpreted and understood in relation to the matters at issue.
 - (b) The Chief Archivist took steps which ensured that her independence could be maintained, particularly given that her review focused in part on the actions of her own office and another division of her Department.
 - (c) The process of engagement with affected parties was fair, and resulted in constructive feedback which was appropriately incorporated into the review findings.
 - (d) The report itself meets the standards that would be expected for a review by an independent statutory officer.

Robert Buchanan
Wellington
21 August 2015

Appendix D: Archives New Zealand's disposal authorities and recordkeeping advice

Disposal authorities relevant to this review
DA 576 General Disposal Authority 7 (GDA 7): Facilitative, Transitory, and Short-Term Value Records - issued 2 August 2013 http://www.archway.archives.govt.nz/ViewEntity.do?code=DA576
DA 214 Disposal Authority for Ministerial Records - approved 22 November 2005 http://www.archway.archives.govt.nz/ViewEntity.do?code=DA214
DA 102 General Disposal Authority 3 (GDA 3): General Housekeeping Records - issued October 2005, revoked 6 August 2013 (replaced by GDA 7)
Standards
Records Management Standard for the New Zealand Public Sector - issued May 2014, mandatory from 1 July 2014 http://archives.govt.nz/records-management-standard-new-zealand-public-sector-downloads
Disposal Standard - issued June 2010 and mandatory from 1 July 2012, revoked June 2014 (replaced by the Records Management Standard)
Appraisal Standard - issued 16 September 1998, revoked 30 August 2011
Other published material
Archives New Zealand website - Ask us a Question: Are text messages/electronic communications covered under Public Records Act? http://archives.govt.nz/advice/ask-question
Fact Sheet 25: General Disposal Authorities - issued June 2013 http://archives.govt.nz/node/2096
Recordkeeping Guide 10: Guide to implementing a disposal schedule - issued February 2008 http://archives.govt.nz/sites/default/files/g10.pdf
Recordkeeping Guide 18: Recordkeeping essentials for Chief Executives and Senior Managers - issued June 2006 http://archives.govt.nz/sites/default/files/g18.pdf
Fact Sheet 1: Make a record - issued June 2006 http://archives.govt.nz/sites/default/files/f1.pdf
Fact Sheet 7: Recordkeeping responsibilities - issued June 2006 http://archives.govt.nz/sites/default/files/f7.pdf
Information for Ministers and staff supporting them
Depositing Ministers' papers with Archives New Zealand - Senior Private Secretaries training presentation hand out, 7 July 2014
Transferring the Papers of Ministers and Members of Parliament, May 2013
Transferring the Papers of Ministers and Members of Parliament, 16 August 2010
Transferring the Papers of Ministers and Members of Parliament, 26 September 2008
Depositing Ministers' papers with Archives New Zealand - Senior Private Secretaries training presentation hand out, 7 July 2014

Appendix E: Comparison of management processes for text messages



