The Right Honourable Lord Dyson
The Master of the Rolls
Chairman of the Advisory Council
Part One – The Advisory Council

The Advisory Council on National Records and Archives (the Council) is an independent body. It advises the Lord Chancellor on issues relating to access to public records and represents the public interest in deciding what records should be open or closed. It was established by the Public Records Act 1958 as a non-departmental public body.

It is chaired by the Master of the Rolls and has 16 members including historians, archivists, information management professionals, former civil servants and journalists.

The role of the Council

The Council:

- Advises the Lord Chancellor on issues relating to public records that are over 20 years old (historical public records), including public access to them, at the point of transfer to The National Archives.

- Advises on requests from government departments to retain historical public records under the Public Records Act.

- Advises on the public interest when departments want to keep historical public records closed under Freedom of Information Act exemptions. It regularly challenges departments to provide evidence to justify such requests.

- Through its sub-committee, the Forum on Historical Manuscripts and Academic Research, advises the Chief Executive and Keeper of The National Archives on matters relating to private archives outside the public records system.

It also supports government departments and The National Archives by providing independent advice and scrutiny on issues relating to records management and archives.

Principles

Openness and objectivity underpin the Council’s work in considering applications for the retention or closure of records. The Council’s guiding principle is to support information being made public. That principle will only be set aside when there are clear grounds to do so, based on public or the national interest, or sensitivity about personal data. It regularly challenges government departments to provide evidence to justify requests for documents to remain closed.
Membership

The Council is chaired by the Master of the Rolls. It currently has 16 members.

Members are unpaid but are entitled to make a claim for travel and subsistence expenses incurred through the performance of their duties. These costs are met by The National Archives.

During the period covered by this report, 14 members came to the end of their terms. Of these, nine had either served for the 10-year maximum period permissible under the Office of the Commissioner for Public Appointments (OCPA) rules or did not wish to seek a further term. These members were: Ms Else Churchill, Professor Harry Dickinson, Sir David Durie, Dr Clive Field, Ms Christine Gifford, Mr Hamish Macarthur, Professor Michael Moss and Mr Ian Soutar, who stepped down on 30 June 2014. Dr Jeevan Deol stepped down on 31 December 2014.

To ensure that the Council could continue to operate effectively and would not lose the majority of its experienced membership within a few months, the Lord Chancellor agreed to the following reappointments:

- **Mr Stephen Hawker** and **Ms Sarah Fahy**, who had both joined the Council in 2011, for a full term of three years until 30 June 2017.
- **Mr John Collins** and **Mr John Millen** for two years until 31 December 2016.
- **Professor Arthur Lucas** and **Mr Graeme Herd** for one year until 31 December 2015.

In addition, the Council ran a major recruitment exercise to replace the members whose terms ended in June 2014. Forty-four applications were received and, following interview, eight suitable candidates were recommended to the Lord Chancellor who approved their appointment for a three-year term with effect from 15 September 2014.

The current members of the Council are:

- **Ms Hillary Bauer OBE**, Adviser on culture and heritage issues; formerly Head of International and Cultural Property Unit, Department for Culture, Media and Sport *
- **Professor Rodney Brazier MVO**, Emeritus Professor of Constitutional Law, University of Manchester; Fellow of the Royal Historical Society*
- **Mr John Collins CBE**, Formerly Deliverer of the Vote, House of Commons
- **Mr John Evans**, Communications and media consultant; formerly Head of Communications at the Olympic Delivery Authority, civil servant and BBC journalist*
- **Ms Sarah Fahy**, Global Head of Library Services, Know How and Training Department at Allen and Overy LLP
• **Ms Lesley Ferguson**, Head of Collections, Royal Commission on the Ancient and Historical Monuments of Scotland*

• **Dr Bendor Grosvenor**, Art Historian and Adviser on Culture Policy

• **Mr Stephen Hawker CB**, Independent Consultant and former senior civil servant

• **Mr Graeme Herd**, Project Manager, North Ayrshire Council

• **Dr Elizabeth Lomas**, Researcher and Tutor at Northumbria University, formerly Head of Records Management Services for the Royal Household

• **Professor Arthur Lucas CBE**, Emeritus Professor of Science Curriculum Studies at, and was formerly Principal of, Kings College London

• **Mr John Millen**, Formerly Policy Director, Ministry of Defence

• **Dr William Peace**, Visiting Senior Research Fellow, International Centre for Security Analysis, Kings College London; formerly Deputy Director for Strategy and Information, Serious Organised Crime Agency*

• **Sir John Ramsden Bt**, Formerly HM Ambassador to Croatia; formerly Head, Central and North West Europe Department, Foreign and Commonwealth Office*

• **Mr Michael Smyth CBE QC(Hon)**, Visiting Professor, Queen Mary College London; Chairman, Community Links; former Head of Government Practice, Clifford Chance*

• **Mr Trevor Woolley CB**, Formerly Director General, Ministry of Defence*

*new member

The Secretary to the Council is Ms Beth Watson.

**Openness**

The Council publishes summaries of meetings on its website.

Council members are required to adhere to the Seven Principles of Public Life. A register of members’ interests is publicly available on the Council’s webpages. Members are also required to declare any individual interests in relation to the applications they consider and to recuse themselves if this is considered necessary in the view of the Chairman and other members.

The Council is required to consider requests made to it under the Freedom of Information Act. During this reporting period the Council received and responded to three requests for information.
Part Two – The Advisory Council’s work

Meetings

The Council held three meetings during 2014-15: in May and November 2014 and in February 2015. Its scheduled meeting in July 2014 was cancelled but, as part of its continued commitment to examine its working practices, the Council took the opportunity to trial a process by which the closure and retention applications that had been submitted were considered electronically.

The National Archives’ Chief Executive and Keeper attends Council meetings. Following the departure of Oliver Morley in October 2013, Clem Brohier attended our meetings in November 2013 and February and May 2014 as Acting Chief Executive. Following his appointment in July, the Council welcomed Jeff James to its November 2014 and February 2015 meetings.

Meetings are also attended by other representatives from The National Archives who have particular expertise related to the issues considered by the Council. Attendees include Carol Tullo, Director of Information Policy and Services; Julia Jones, Head of Information Management and Practice; Stuart Abraham, FOI Centre Manager; Helen Potter, FOI Manager; and Sam Whaley, Acting Head of the Chief Executive’s Office.

Access to Public Records

- Closure and retention

The Council is responsible for advising the Lord Chancellor on the application of the Freedom of Information Act 2000 (FOIA) to historical public records. It also advises the Lord Chancellor on applications submitted to him by departments for the retention of public records under the Public Records Act 1958.

Both records retained by departments and those closed at transfer to The National Archives remain subject to the FOIA and individuals can make an FOI request to access them.

Each year thousands of government records are transferred to The National Archives. The vast majority are transferred open and can be viewed at The National Archives. However, in a small proportion of cases, historical information contained in records which are being transferred attracts certain exemptions under the FOIA, for example personal information or details which could harm the national interest. In these cases government departments must submit an application for permission for the records or extracts to be
closed at transfer. Decisions on these requests have been delegated to the Council by the Lord Chancellor.

The table below shows the number of records transferred to The National Archives over the last three financial years, together with the number of applications for closure or retention considered by the Advisory Council, and the number queried by it.

<table>
<thead>
<tr>
<th></th>
<th>Total no of records accessioned by The National Archives</th>
<th>Total no of closure and retention applications considered by the Advisory Council</th>
<th>Total no of applications queried by the Advisory Council</th>
<th>Total no of applications where clarification was received*</th>
<th>Total no of applications which were amended by departments*</th>
<th>Total no of applications withdrawn by departments following challenge by the Advisory Council</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012/13</td>
<td>38,326</td>
<td>2,239</td>
<td>91</td>
<td>13</td>
<td>50</td>
<td>5</td>
</tr>
<tr>
<td>2013/14</td>
<td>65,545</td>
<td>4,062</td>
<td>141</td>
<td>31</td>
<td>17</td>
<td>2</td>
</tr>
<tr>
<td>2014/15</td>
<td>35,617</td>
<td>5,043</td>
<td>209</td>
<td>82</td>
<td>66</td>
<td>8</td>
</tr>
</tbody>
</table>

* These applications were agreed by the Advisory Council subject to that clarification or amendment.

This year the Council considered 4,250 applications for extended closure and raised queries on 181 cases. This resulted in five requests for closure being withdrawn and a further 56 being amended so that the closure period was reduced, the reasons for closure more accurately explained, or the amount of information closed reduced (wherever possible the Council asks departments to consider redaction rather than the closure of whole files).

There are a number of grounds under which departments can ask to retain records including having an ongoing business need to access them or to allow the department to deal with a review backlog. During the period covered by this report, the Council considered 793 retention applications and raised queries in 28 cases. These challenges led to three requests being withdrawn and four instances of the retention periods being reduced.

It is usual practice for members to receive details of applications for extended closure or for retention at least two weeks before a Council meeting to give them sufficient time to consider them. They will then raise any questions or concerns they may have at the meeting.
The Council will make recommendations only once it is fully satisfied that a department has made a convincing argument for closure or retention. Wherever possible the Council asks departments to consider redaction rather than the closure of whole files. Where members agree that the information given by a department is inadequate or unclear, they will decline to approve the application until sufficient detail has been provided or any points of confusion have been resolved. They may ask, for example, for confirmation that an individual whose personal details are being protected is still alive, or for assurances that it really is the case that the release of information concerning developments in weapons technology in the 1960s would still have a detrimental impact on national defence in 2015. They are also keen to make sure that departments are not wishing to keep information closed simply to avoid embarrassment rather than for any objective reason reached after an impartial review of the records.

Where a department wishes to retain records, the Council will often challenge the length of the requested retention period and ask the department to explain why, for example, it cannot put in place plans to address any backlog as quickly as possible and it will ask to have sight of these plans before agreeing that the records can be retained. In many cases, the Council will ask a department to submit a revised application which addresses the queries that it has raised. However, where it has more serious concerns about the nature of a particular application or in cases which raise new or unfamiliar issues, it can and will ask departmental representatives to attend a Council meeting to discuss the matter in more detail. Where it has asked a department to present a timetable for transfer before agreeing retention, it will request regular updates on progress.

The Council was pleased to note that the quality of the applications it receives has continued to improve. Departments have generally acted quickly in response to queries from the Council on their applications and ensured that any feedback is reflected in subsequent submissions. The National Archives has also played an important part in making sure that departments are informed of the Council’s requirements and in providing quality assurance before applications are seen by members. These improvements have resulted in the Council needing to query fewer cases, as departments have responded positively to the searching scrutiny of the Council’s queries. Nonetheless, the Council continues to identify and challenge issues where they arise such as the incorrect use of exemptions and what it considers to be unnecessarily long closure or retention periods.
• **FOI Panels**

Panels of three Council members are convened to consider the public interest in the release of closed information held in The National Archives, when this is requested as part of a FOIA request.

In most cases the closed information is either: information that if released would endanger the safety or physical or mental health of any individual; information that would damage international relations; or information relating to law enforcement. Cases are carefully scrutinised and debated by panels. If they consider it necessary, a panel will request further detail or clarification from the relevant department or The National Archives. Even where they are in agreement with exemptions being applied, they may also raise general concerns or issues they have about departmental practices and draw attention to inconsistencies between departments.

During 2014-15, 25 panels were convened, with 250 cases being considered in total. In many cases, having been provided with more detail, the panels accepted departments’ arguments for closure. In some instances – around 1% of the cases considered – the panels concluded that the public interest lay in disclosure and therefore the documents were made available at The National Archives. The panels’ conclusions are presented and discussed at the subsequent meeting of the full Council.

**Engagement with departments**

As is its usual practice, the Council has invited government departments to its meetings to discuss their applications for closure or retention, or to provide updates on how their records management processes are operating. During the past year, representatives from the Cabinet Office, the Crown Prosecution Service, Ministry of Defence, HM Treasury and the Foreign and Commonwealth Office (FCO) have attended.

As well as giving members an opportunity to examine thoroughly the reasons behind a department’s application, these face-to-face meetings have enabled the Council to discuss areas of concern and to propose ways in which departments could address these. Most departments have embraced this interaction. They have been open about the problems they are working to address and potential obstacles to achieving their objectives, and have been receptive to the Council’s feedback. Unfortunately, members noted that this level of engagement is not universal and they were particularly concerned about the approach adopted by the Cabinet Office in its dealings with them. The initial lack of willingness from the department to engage with the Council resulted in what could have been an avoidable delay in resolving issues.
related to the proposed retention of records. However, the Council is now confident that senior management within the department has a better appreciation of the concerns raised by members and looks forward to a more productive relationship in future.

The Council has continued to pay attention to developments within the FCO. The FCO’s Departmental Records Officer, its Head of Archives, and Professor Tony Badger, who led the independent review of its migrated archives and special collections, attended the Council’s May 2014 meeting to present its plans for annual transfers and special collections, including its proposals for the prioritisation of records and their timetable for the release of those categorised as high priority. At the request of the Council, they presented a further paper in February 2015, providing a more detailed outline of their plans regarding the medium and low priority records. This provided the Council with the reassurance it sought that the department would not neglect its lower priority records and that there would be less risk of it needing to seek to retain them for any longer than set out in the current timetable.

The FCO has also kept the Council informed of other developments concerning the handling of its other files series. Following a retention application submitted in November 2014 regarding around 170,000 legacy files identified during a recent file audit, Council members expressed some concern about the possibility that the FCO will continue to discover other legacy files. However, they recognised that the FCO was acting in good faith, keeping the Council updated on progress and seeking permission to retain records as soon as it became clear they needed to do so. The Council sees its dealings with the FCO as the type of constructive relationship which it would like to develop with other departments.

**Improving communications with stakeholders**

Over recent years the Council has observed a growing public and media interest in the management of public records and the process by which departments are allowed to retain records or request that they remain closed. It recognises that, as an independent body, it has a key role in helping to maintain trust in the system, and that an important part of this is being as open and transparent as it can be about its own activities.

While the details of the Council’s consideration of closure and retention applications are, by their very nature, sensitive, the published summaries of Council have been expanded as much as possible to give as full a picture as possible of the range of issues that are discussed.

In November 2014, a working group of five members was set up to examine ways in which the Council could ensure that its work is better understood. Work has begun
on a refresh of its webpages which will include a clear statement in Plain English of the Council’s role and the principles under which it operates.

In addition the Council has continued to look for opportunities to engage directly with those interested in its work. In May 2014 the FCO hosted its second FCO Records Day for academics which focused on the FCO’s plans for the release of its special collections. Dr Jeevan Deol attended on behalf of the Council and spoke to participants about the Council’s work and its role within the UK public records system.

Part Three – Wider Issues

• Sir Alex Allen’s Records Review
  As part of his review on records management across government, Sir Alex Allan met the Master of the Rolls, Professor Michael Moss, Professor Arthur Lucas and Sir David Durie to discuss the Council’s role and its views and observations.

  The Council welcomed Sir Alex’s final report, which it believes will be valuable in focussing attention on an area of business that risks being overlooked when setting departmental priorities. Of particular note, given the Council’s continuing involvement with the FCO, was his suggestion that the FCO consider whether the sensitivity review of the special collections material might be carried out in a simplified, less intensive way, and whether it may be possible to accept greater risks in releasing the material given its age. The Council will also observe with interest the operation of the Cabinet Office Challenge Panel and any subsequent roll-out of similar panels in other government departments.

• The 20-year rule
  The Council has continued to receive annual updates on government departments’ compliance with the transition from the 30 to the 20 year rule, and staff from The National Archives attended the Council’s February 2015 meeting to give a presentation on the recently published Record Transfer Report (an overview of the bi-monthly reports produced by departments which The National Archives to monitor progress). The Council welcomed the greater transparency that the Record Transfer Report has encouraged since its introduction in 2012.

Meetings have also included discussions on:

• Employment tribunal records
• The launch of the UK Government’s social media archive
- Records relating to attempts to locate the next of kin of Polish killed in World War II and to return personal effects to them
- The strategic vision for The National Archives Leadership of the Archives Sector
- The digitisation of the 1939 National Health Register
- The National Archives Fees Order

**Part Four – The Forum on Historical Manuscripts and Academic Research**

The Forum on Historical Manuscripts and Academic Research (the Forum) was established in May 2010. The Forum in its capacity as a subcommittee of the Advisory Council provides a means through which the Historical Manuscripts Commissioner can seek advice about activity relating specifically to historical manuscripts (private archives), as well as a place for discussion about academic research issues.

It is chaired by the Master of the Rolls. Its membership has expertise in academic research and/or knowledge and experience of private archives, and includes four members of the Advisory Council. During the period covered by this report Dr Clive Field and Professor Michael Moss came to the end of their terms on the Advisory Council and Forum. At its meeting in November 2014, the Advisory Council agreed that Ms Hillary Bauer and Ms Lesley Ferguson should be appointed to the Forum in their place, joining existing members Dr Bendor Grosvenor and Dr Elizabeth Lomas.

There are three other members of the Forum who were appointed for a second three-year term with effect from 1 July 2014:

- Dr Clive Cheesman, Richmond Herald at The College of Arms
- Dr Ian Mortimer, historian and historical biographer, qualified archivist and Fellow of the Royal Historical Society
- Dr Christopher Ridgway, Curator at Castle Howard and Adjunct Professor in the History Department of the National University of Ireland

The Forum met twice during the year over the last year on 13 June 2014 and 31 January 2015. During these meetings the Forum considered the following issues:

- The National Archives’ Independent Archives Team’s future priorities
- Archives for the Future
- Acceptance in lieu of tax
- The EU General Data Protection Regulations
- Export Stops
- Proposals for an Index of Manuscripts of Daily Life
- Investigation of Charity and Scientific & Technical Archives
• Guidance on De-accessioning and Disposal
• The 20-year Rule
• The National Archives Future Direction & Strategy, and Realignment
• Proposals for an exhibition to celebrate the 150th anniversary of the Historical Manuscripts Commission
• Copyright and Publication Rights
• Improvements to Discovery, The National Archives online catalogue.

An area of particular concern for the Forum this year was the apparent weaknesses of operation of the export stop process, which were highlighted by the sale of General Wolfe’s papers to the University of Toronto. Dr Grosvenor and Dr Field subsequently met with the Reviewing Committee on the Export of Works of Art and Objects of Cultural Interest to discuss the issues raised by the sale. At that meeting it was agreed that communications relating to the possible sale of such papers in future should be improved and widened. Arts Council press releases, for example, should be clearer to avoid urgent issues being overshadowed by more high profile cases.

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June 2015