

# Freedom of Information, Copyright and Copying Of records held in archives

Published: February 2016



© Crown copyright 2016

You may re-use this information (excluding logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit [nationalarchives.gov.uk/doc/open-government-licence](http://nationalarchives.gov.uk/doc/open-government-licence)

Where we have identified any third-party copyright information, you need to obtain permission from the copyright holder(s) concerned.

This publication is available for download at [nationalarchives.gov.uk](http://nationalarchives.gov.uk).

## **Introduction**

The purpose of this guidance is to distinguish between the communication of information held by public authorities under Freedom of Information legislation, any subsequent re-use of that information and providing copies of material in archives. Making use of a copyright work without the permission of the copyright owner will normally infringe copyright; however, in certain circumstances requesting permission is not necessary.

## **Communication of information under the Freedom of Information Act**

Under the [\*\*Freedom of Information Act 2000 \(FOIA\)\*\*](#) each public authority has a legal obligation to make information available on request and to maintain a Publication Scheme about their activities. Publication Schemes provide details of information which authorities publish or intend to publish.

The presence of copyright, including third party copyright, does not prevent the disclosure and communication of information in response to Freedom of Information requests nor does publishing information on a publication scheme. Copyright does not act as a statutory bar to disclosure for the purposes of section 44 of FOIA. This is because section 50(1) of [\*\*Copyright, Designs and Patents Act 1988 \(CDPA\)\*\*](#) provides that "*Where the doing of a particular act is specifically authorised by an Act of Parliament, whenever passed, then, unless the Act provides otherwise, the doing of that act does not infringe copyright*".

Responding to an FOI request constitutes an act specifically authorised under an Act of Parliament. Consequently communicating information to a requester under FOIA will not infringe copyright. The same principle applies for information communicated under the [\*\*Environmental Information Regulations 2004 \(EIR\)\*\*](#). Communicating information under FOIA is free from conditions or restrictions in order to facilitate disclosure, however, copyright will still subsist in the information provided. Since copyright would not be infringed, archives do not require a declaration process where communicating information in response to an FOI request as they would in other circumstances to provide copies of copyright material (see section on Declarations). For further guidance from the Information Commissioner about FOI requests and copyright see

[ICO Intellectual property rights guidance](#)

## **Use of information provided by FOI - Copyright protection**

Information provided in response to an FOI request or listed in Publication Schemes, may be subject to copyright protection. The supply of documents under FOI does not automatically give the person or organisation who receives the information a right to re-use the documents in a way that would infringe copyright. The person who receives the information under FOI is obliged to respect the rights of the copyright owner. If they do not, the copyright owner can seek damages or an injunction for any infringement of copyright. Public authorities may advise the applicant if the information requested under FOI is subject to copyright protection where known, however it is the responsibility of the applicant to ensure they do not infringe copyright.

## **Crown Copyright and Open Government Licences**

Details of the arrangements for reusing Crown copyright material can be found at [Crown copyright](#). The re-use of Crown copyright information and Crown database rights are licensed through the Open Government Licence (OGL). The OGL is a simple set of terms and conditions for the re-use of a wide range of public sector information free of charge. Further information about the OGL is available at [Licensing for re-use OGL](#). The Freedom of Information Act covers the wider public sector so not all public authorities' information will be Crown copyright. For a list of Crown bodies see [Crown bodies](#). Crown bodies and archives holding Crown material can license its re-use under OGL without any need for approval. Other licence terms require a delegation.

## **Public Sector Information**

Any information, whatever its form – including print, digital or electronic, and sound recordings – produced, held or disseminated by a public sector body is considered public sector information. This includes an enormous range of corporate information such as reports and financial data, mapping, codes of practice, public records, legislation, statistics, video, press releases, local planning and tourist information, artefacts, publication schemes, and so on.

Enabling the re-use of public sector information aims to realise economic, societal and democratic benefits in permitting re-users other than the originating public authorities to create new products and services using official information, thereby stimulating economic activity, and to increase the efficiency and transparency of public functions. Accessible information which is produced, held or disseminated by the public sector body must be made available for re-use (unless it is otherwise restricted or excluded). Common examples of restrictions and exclusions include third-party copyright exclusion and the protection of personal data. All public sector bodies should make clear when granting access to information if there are any restrictions on re-use.

### [PSI implementation guidance for public sector bodies](#)

The 2015 Re-use of Public Sector Information Regulations do not apply to documents held by public service broadcasters, educational, research or most cultural establishments. They did, however, bring archives together with museums and libraries within the scope of the regulations. Archives may, rather than must, permit re-use of documents in their collections. Refusals to give permission to re-use may not be discriminatory, and such decisions can be challenged. Archives must allow re-use of information if it has already been made available for re-use, including re-use by the archives themselves. Where re-use is permitted for more than one party, including by the archives, it must be on the same terms and conditions (non-discriminatory). Archives can charge to cover the cost of collection, production, reproduction, preservation and rights clearance together with a reasonable return on investment and they may decline the permission to re-use information. The Regulations recognise that archives and other cultural bodies have particular requirements regarding their need to make exclusive arrangements when digitising information. Whereas exclusive arrangements generally are banned, there is an exemption covering archive digitisation projects. There is further guidance on this in the PSI implementation guidance for cultural sector bodies. Documents are exempt from the regulations where copyright does not belong to the public sector body or the information is not accessible under FOI. Archives should be very clear in any contractual relationships where copyright belongs. Cultural sector public bodies are required to be transparent about what information can be re-used, the pricing of it, and the terms and conditions on which that re-use can take place.

## PSI implementation guidance for the cultural sector

### **Public Records**

Any public record open to public inspection may be copied and a copy supplied without infringement of copyright in line with section 49 of CDPA. Additionally, section 47 of CDPA permits copying of material that is open to public inspection pursuant to a statutory requirement (or is on a statutory register), in certain circumstances, and section 48 of CDPA permits copying of material communicated to the Crown in the course of public business, in certain circumstances.

### Copyright material held by public bodies

### **Third Party Copyrights**

Not all information provided in response to FOI requests, listed in Publication Schemes and held by archives will necessarily be in copyright owned by the public authority. It will, therefore, help researchers if any such material is identified together with details of who owns the copyright, where known. Authorisation to re-use copyright material not owned by the public body or Crown should be sought from the copyright holders concerned.

### **Declarations**

The Copyright, Designs and Patents Act has been changed to make it easier and cheaper for cultural institutions like archives to use, share and preserve their collections. An archivist who is supplying a copy outside FOIA must ask a researcher to declare that they are doing non-commercial research; this can now be done electronically (for example, an electronic copyright declaration form could be signed using a typed name and check-box system).

### Exceptions to copyright: Libraries, Archives and Museums

Further information on copyright and exceptions to copyright can be found on The Intellectual Property Office's website at  
[IPO guidance - exceptions to copyright](#)

It is always advisable to check that any copying of copyright material is permitted.

### **Other Forms of Intellectual Property Rights (IPR)**

Most information falling within the scope of FOI is likely to be covered by copyright. It is conceivable that some of the information supplied under the terms of the Act could relate to specific forms of intellectual property, e.g. patents and trademarks. Information on such Intellectual Property Rights can be found on the website of the [Intellectual Property Office](#).