

Access to public records

A toolkit for practitioners involved in the sensitivity review and transfer of public records to The National Archives and other archives services

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Purpose of toolkit

Records are transferred to The National Archives and places of deposit under the [Public Records Act 1958](#). With the full implementation of the [Freedom of Information Act 2000](#) (FOIA) in January 2005, public access to records held by archives services and the basis for their closure on transfer was altered substantially. The 'Thirty Year Access Rule' was abolished and the previous manual's guidance on extended closure and accelerated opening provisions was superseded.

The FOIA now governs public access to public records. When the information in those records is environmental information as defined in the [Environmental Information Regulations 2004](#), public access is governed by those Regulations, which are similar but not identical to the FOIA. For simplicity FOIA is used throughout this toolkit and Environmental Information Regulations specified only when provisions differ.

The Information Commissioner's Office (ICO) issues guidance on FOIA exemptions (the reasons to withhold information). The Department for the Environment, Food and Rural Affairs (Defra) issues guidance on the Environmental Information Regulations. Part 2 of the code of practice on the management of records under section 46 of the FOIA sets out how records should be transferred to archives services.

The aim of this toolkit is to supplement advice regarding the transfer of public records to archives services. It is a reference tool for use by those involved in the sensitivity review of records and the transfer of closed records. The guidance is intended primarily for the transfer of public records held by government departments to The National Archives or other approved places of deposit but the principles and examples may also be relevant to the transfer of non-public records.

The FOIA has changed the legal framework governing access to all government information. We will revise this toolkit periodically to take note of precedents and other changes in legislation into account.

What are public records, and who is responsible for them?

Public Records are records that fall within the scope of the [Public Records Act 1958](#) (PRA) as set out in Schedule 1 to that act. They are records created or received by government departments and their executive agencies, the armed forces, NHS authorities and the courts. They include the records of non-departmental public bodies (NDPBs) if they are Crown property but not those of bodies that own records in their own right, unless the NDPB is listed in the table following paragraph 3 of Schedule 1 to the PRA.

There are some explicit exclusions, for example registers of births, marriages, deaths and adoption; records wholly or mainly relating to Scottish affairs; and the permanent collections of public record museums and galleries. The act also gives the Secretary of State the power to determine whether a body's records are public records or not and for bodies to be made public record bodies by Order in Council.

Scotland and Northern Ireland have their own record offices and legislative provisions for archives. The National Assembly for Wales has the power to establish a record office for Wales but has not yet done so.

The Chief Executive of The National Archives as Keeper of Public Records has the responsibility of coordinating and supervising the selection and transfer of records to The National Archives. Once records are in The National Archives, the Keeper is charged with preserving them, providing catalogues and indexes, allowing the public to consult them, providing copies of them, and lending them to exhibitions. Although the Keeper has custody of transferred records, departments can request the temporary return of documents transferred by them.

Every person responsible for public records must select those worthy of permanent preservation and transfer them to The National Archives or a place of deposit approved by the Secretary of State.

Only a small fraction of public records are identified as suitable for permanent preservation in The National Archives or in places of deposit, and the great majority of those not selected are destroyed. The National Archives' [Records Collection Policy](#) has been formulated in consultation with a broad spectrum of interest groups and are available from The National Archives.

Legislative context

Most of the law relating to public records is found in the [Public Records Act 1958](#) and the [Freedom of Information Act 2000](#).

The 1958 Act transferred responsibility for public records from the Master of the Rolls to the Lord Chancellor and established the post of Keeper of Public Records in its current form. The act provided that the public records selected for permanent preservation were to be transferred to The National Archives or to a place of deposit no later than 30 years after their creation. When they had been in existence for 50 years they were to be available for public inspection, unless action was taken to withhold them for longer. Before this act was passed, many departmental records stayed in their departments much longer and arrangements for public access were variable across government.

The act was amended in 1967 to reduce the closure period from 50 to 30 years. This closure period was removed by the FOIA which came into operation on 1 January 2005, providing a new statutory framework for access to public records. The date of transfer was not changed and so the deadline for transfer of records remained at 30 years.

Section 45 of the [Constitutional Reform and Governance Act 2010](#) (CRAG Act) amended PRA s3(4) by reducing the deadline for transfer from 30 years to 20 years. Section 46 of the CRAG Act amended the FOIA s62 by bringing forward the date at which a record becomes a historical record from 30 to 20 years. Section 46 of CRAG Act also amended the duration of some FOI exemptions specifically. These CRAG Act provisions are being implemented over a ten year period from 2013.

From 17 September 2015 the parent department for The National Archives became the Department for Culture Media and Sport. This machinery of government change took legal effect on 9 December 2015 with [The Transfer of Functions \(Information and Public Records\) Order 2015](#).

The PRA also provides for an Advisory Council to advise the Secretary of State on various public records matters as outlined later in this toolkit.

Deposited records

The Keeper is empowered to accept records which are not public records. This is done where the Keeper is of the view that the records merit permanent preservation, and the body generating the records agrees to deposit them. The body and The National Archives enter into an agreement which usually provides for the records to be accessible on the same basis as public records.

The organisation making the deposit must carry out the necessary selection and preparation work under the supervision and guidance of The National Archives staff. The copyright status of information in the records remains unaffected by the deposit.

For further information see:

[Public Records Act and public records system](#)

[Code of practice on the management of records under section 46 of the Freedom of Information Act](#)

[Freedom of Information Act 2000](#)

[Environmental Information Regulations 2004](#)

Principles for determining access status of records on transfer

Introduction

Public records selected for permanent preservation should be transferred to The National Archives or an approved place of deposit no later than 20 years after creation, unless the Secretary of State authorises a department to keep them for longer.

Departments should have effective arrangements to determine which records should be selected for permanent preservation and whether they should be retained in the department, designated as open on transfer or transferred as closed.

The process of determining whether records should be retained or access should be restricted is called 'sensitivity review'.

Transfer or retention

When sensitivity reviewing records, departments may identify records which are appropriate for retention within the department beyond 20 years, under section 3(4) of the [Public Records Act 1958](#) (see Retention of public records by departments). Departments should submit applications to retain records to The National Archives for review and advice. The Advisory Council will then consider the case in favour of retention of the record beyond the 20 year period. Records for retention of individual records will be considered by the Advisory Council, unless there is already in place a standing authorisation for the retention of a whole category of records. It will consider such applications on the basis of the guidance in chapter 9 of the White Paper [Open Government \(Cm 2290, 1993\)](#) or subsequent revisions of government policy on retention. If it is satisfied with the application, the Advisory Council will recommend the Secretary of State approve it.

Closure on transfer

Public records transferred to archives services should be made available for public inspection (transferred as open) unless exemptions under the Freedom of Information Act (FOIA) have been identified and are considered to still apply at the time of transfer. This includes exemption under the Environmental Information Regulations and prohibitions on access in other legislation.

Restrictions on public access should only be in place with good reason, giving due weight to the passage of time. In reviewing records for release, departments should ensure that records become available to the public at the earliest possible time, and if they are to be transferred as closed a date at which the closure period will be ended or reviewed should be specified.

Researchers have a right to make an FOI request for a closed record at any time, and closed records must be reviewed if a request is received. The review process includes consultation with the responsible transferring body which, for public records, is a requirement under the FOIA s66.

General access principles

Greater openness is of long term benefit both to the citizen and to the Government. The FOIA contains exemptions to protect legitimate interests and sensitivities but public access should not be restricted unless there is good reason to do so.

Transferring authorities should identify which records require closure on transfer; which FOI exemptions apply and why; and how long records should be held as closed by archives services before they are either opened or re-reviewed.

1) Closure should be specific

Transferring departments should specify the grounds for closing records under the FOIA and explain why exemptions apply. These details may be withheld from the public if the exemption and its application is itself sensitive (for example information supplied by security bodies).

As a general rule records should remain closed where the public interest in keeping them closed outweighs that of making them available (this applies to qualified exemptions only). Departments should identify which records, or potentially which parts of records, require closure and apply restrictions appropriately. Large numbers of records should not be closed if only a few actually contain sensitive information. If there are multiple reasons for closure then identify all of them.

2) Closure should be for a limited time span

Closure should be for a finite time as sensitivity reduces over time. In certain circumstances such as international sensitivity, it is not always possible at the time of transfer to identify a specific date at which records can be opened. In this case a date should be set for when the record should next be reviewed by the department to assess whether continued closure is required.

Closure periods are set from the end date of the record rather than that of an incident or specific documents within a file. It is highly unlikely that a closure period beyond 100 years will be required and permanent closure periods will not be accepted.

3) Closure should be applied consistently

Closure should be consistent with the FOIA and other relevant legislation. Information which a department would provide if it received an FOI request should not be closed on transfer to an archives service. Access conditions should also be consistent with similar information in other transferred records or created by different departments. Therefore, departments should consult with other authorities as necessary during the sensitivity review process.

For further information see:

[ICO guidance on exemptions](#)

[Defra guidance on Environmental Information Regulations](#)

Freedom of information exemptions

The [Freedom of Information Act 2000](#) repealed virtually the whole of section 5 of the [Public Records Act 1958](#) which concerned access to public records. The text that applies to The National Archives (at s5(3)) now reads:

It shall be the duty of the Keeper to arrange that reasonable facilities are available to the public for inspecting and obtaining copies of public records in the Public Record Office which fall to be disclosed in accordance with the Freedom of Information Act 2000

Thus access to information in public records is provided under the FOIA although physical access to the records themselves falls under the PRA.

Under the FOIA there is a presumption of openness, irrespective of the date of the record, unless an exemption applies.

There are two categories of exemption absolute exemptions and qualified exemptions. An absolute exemption is one that if applied means there is no obligation under the FOIA to release the requested information. (although there may be scope, or obligations for other reasons outside the act to do so). A qualified exemption means that the public authority has to assess the balance of the public interest for and against disclosure, and the arguments against need to outweigh those for to justify non-disclosure. All exemptions in the Environmental Information Regulations are qualified and are called exceptions.

Exemptions can be either class- or prejudice-based. A class-based exemption means that if the information is of a type described in the exemption then it is covered by that exemption. All absolute

exemptions and some qualified exemptions are class-based. This means that in order to use the exemption the authority does not have to demonstrate that any particular harm would be caused by disclosure however in the case of qualified exemptions, authorities still need to consider the balance of public interest before deciding whether or not to disclose the information.

Prejudice-based exemptions are ones where the authority has to show that the prejudice or harm that is specified in the exemption either would or would be likely to occur. If an exemption is prejudice-based then the authority still must carry out the public interest test.

Some FOI exemptions automatically cease to apply after 20 years or some other pre-defined period. In the case of exemptions without a pre-defined cut-off date (indefinite exemptions), the information will remain exempt for as long as the criteria for the use of the exemption continues to be applicable.

The need to apply an exemption, or to apply it in the public interest, will generally diminish as time passes so that such records can be released eventually. The exemption for personal information (s40) ceases to apply when the individual concerned is no longer alive.

Summary of FOI Exemptions

This table shows the exemptions to the rights to information, noting their duration and also whether the public interest test applies.

* Secretary indicates that the Secretary of State must be consulted about a proposed refusal to disclose in the public interest information in a record in The National Archives or in a record retained under PRA s3(4).

20 ** indicates that the exemption duration has reduced to 20 years from 30 years as a result of the [Constitutional Reform and Governance Act 2010](#) section 46. This is an incremental transition from 2013 as per the [Freedom of Information \(Definition of Historical Records\) \(Transitional and Saving Provisions\) Order 2012](#).

Section	Exemption	Absolute or public interest test?	Class or prejudice test?	Duration
21	Information already accessible (through another act or included in Publication Scheme)	Absolute	Class	Disapplied for records over 20 ** years old in The National Archives
22	Information intended for future publication (whether the date is determined or not)	Public interest	'reasonableness' test	Disapplied for records over 20 ** years old in The National Archives
23	Information supplied by, or relating to, bodies dealing with security matters (named)	Absolute unless in an historical record in The National Archives	Class	Indefinite * Secretary
24	National security	Public interest	Prejudice test (using different words: 'for the purpose of safeguarding national security' implies a test)	Indefinite * Secretary
26	Defence	Public interest	Prejudice test	Indefinite * Secretary
27(1)	International relations - prejudice	Public interest	Prejudice test	Indefinite * Secretary
27(2)	International relations – information provided in confidence by other states or international organisations or courts	Public interest	Class	Indefinite * Secretary

Section	Exemption	Absolute or public interest test?	Class or prejudice test?	Duration
28	Relations within the UK (between the UK government, the Scottish Administration, the National Assembly for Wales and the Executive Committee of the Northern Ireland Assembly)	Public interest	Prejudice test	30 years * Secretary
29	The economy	Public interest	Prejudice test	Indefinite * Secretary
30(1)	Criminal investigations and proceedings conducted by the authority	Public interest	Class	Indefinite * Secretary
30(2)	Relating to civil or criminal investigations and proceedings which use confidential sources	Public interest	Class	Indefinite * Secretary
31	Law enforcement	Public interest	Prejudice test	100 years * Secretary
32	Court records etc	Absolute	Class	20 ** years
33	Audit functions	Public interest	Prejudice test	20 ** years * Secretary
34	Parliamentary privilege	Absolute	Prejudice test in different words ('for the purposes of avoiding an infringement of the privileges of either House' implies a test)	Indefinite

Section	Exemption	Absolute or public interest test?	Class or prejudice test?	Duration
35(1)(a)	Formulation of government policy	Public interest	Class	20 ** years * Secretary
35(1)(b)	Ministerial communications	Public interest	Class	20 ** years * Secretary
35(1)(c)	Law Officers' advice	Public interest	Class	20 ** years * Secretary
35(1)(d)	Operation of Ministerial Private Office	Public interest	Class	20 ** years * Secretary
36	Prejudice to effective conduct of public affairs	Public interest except for information held by either House of Parliament	Prejudice test	20 ** years This remains at 30 years for Northern Ireland material * Secretary
37(1)(a), (aa), (ab)	Communications with Royal Family and Household (Sovereign and person who is or becomes heir and second heir)	Absolute	Class	CRAAG Act has changed s37(1)(a) by splitting it into several parts 20 years or five years after death of person concerned, whichever is later
37(1)(ac)	Communications with other members of the Royal Family not on behalf of those covered by (a)-(ab)	Public interest	Class	20 years or five years after death of person concerned, whichever is later * Secretary
37(1)(ad)	Communications with the Royal Household not on behalf of those covered by (a)-(ab)	Public interest	Class	20 years or five years after death of Sovereign contemporary with the information, whichever is later * Secretary

Section	Exemption	Absolute or public interest test?	Class or prejudice test?	Duration
37(1)(b)	Honours	Public interest	Class	60 years * Secretary
38	Health and safety	Public interest	Prejudice test	Indefinite * Secretary
39	Environmental information (obliged to make available under the Aarhus convention, or would be obliged but for an exemption in Regulations under s 74)	Public interest	Class	Indefinite * Secretary
40(1)	Personal information where the applicant is data subject	Absolute	Class	Lifetime of data subject
40(2)	Personal information where the applicant is a third party	Absolute in relation to categories (a)-(d) data, qualified in relation to category (e) data	Prejudice test in different and complex words (disclosure should not cause breach of the Data Protection Principles)	Lifetime of data subject
41	Information provided in confidence	Absolute	Variation of prejudice test (breach of confidence must be 'actionable')	Indefinite
42	Legal professional privilege	Public interest	Variation of prejudice test (claim could be maintained in legal proceedings)	20 ** years * Secretary
43(1)	Trade secret	Public interest	Class	30 years * Secretary

Section	Exemption	Absolute or public interest test?	Class or prejudice test?	Duration
43(2)	Commercial interests	Public interest	Prejudice test	30 years * Secretary
44	Prohibitions on disclosure: (a) acts (b) community obligations (c) contempt of court	Absolute	Class	Indefinite

Information exemptions (exceptions) in the Environmental Information Regulations

Regulation	Exception	Absolute or public interest test?	Duration	Note
12(3) and 13	Personal information	As FOIA s40	Lifetime of data subject	
12(5)(a)	International relations, defence, national security or public safety	Public interest test	Indefinite	
12(5)(b)	Course of justice, ability of a person to receive a fair trial or ability of a public authority to conduct a criminal or disciplinary inquiry	Public interest test	Indefinite	
12(5)(c)	Intellectual property rights	Public interest test	Indefinite	
12(5)(d)	Confidentiality of proceedings of that or any other authority where such confidentiality is provided by law	Public interest test	Indefinite	Cannot be used if information relates to emissions

Regulation	Exception	Absolute or public interest test?	Duration	Note
12(5)(e)	Confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest	Public interest test	Indefinite	Cannot be used if information relates to emissions
12(5)(f)	Interests of person who provided information where that person: (i) was not under, and could not have been put under, a legal obligation to supply it to that or any other authority (ii) circumstances of supply are not such that any authority is entitled, apart from EIR, to disclose it, and (ii) has not consented to its disclosure	Public interest test	Indefinite	Cannot be used if information relates to emissions
12(5)(g)	The protection of the environment to which the information relates	Public interest test	Indefinite	Cannot be used if information relates to emissions

Data Protection and personal information

Introduction

The purpose of data protection legislation is to ensure the proper use of personal information about living individuals. It does this by imposing obligations on those who hold such personal information and giving rights to those the information is about - data subjects.

Archivists have a different role in relation to personal data from those who collected the personal data in the first place. First, they do not control the type of data collected, because they were not involved in why, when and how it was originally collected and used for business purposes; second, their interest in the personal information lies in its value as a record of its time that can be used in future research, and

its current accuracy is therefore not of concern; and third they have no interest in the future of the individual data subject, only their past.

This means that the activities of archivists can sit uneasily within the data protection legislative field, as at times they are obliged to comply with provisions which were designed for a different purpose. However the [Data Protection Act 1998](#) (DPA), which came into force in March 2000 (amended by the Freedom of Information Act in 2005), does recognise the importance of data being kept for historical purposes, and contains provisions for this to be achieved within the framework of the legislation.

The DPA imposes a duty on those holding personal data to register their personal data with the Information Commissioner, to comply with eight data protection principles, and to allow people to access and, in certain circumstances, to correct data that relates to them. With the implementation of the FOIA, the DPA has been extended in scope so that it applies to all information about living individuals held by public authorities, whatever the format or structure of the records.

The National Archives, Society of Archivists, Records Management Society and National Association for Information Management produced a [Code of practice for records managers and archivists under s 51\(4\) of the Data Protection Act 1998](#) which may be of interest.

Archiving personal data for research purposes, s33

The definition of research purposes in the DPA includes processing for historical research purposes. This is an important section for records managers and archivists, as it lays down the conditions with which the data controller of an archive should comply if the archive is to be exempt from compliance with various other requirements of the act.

Without the benefit of these provisions, archiving data could be in breach of the second and fifth data protection principles. The second data protection principle requires that personal data shall only be obtained for one or more specified and lawful purposes and shall not be further processed in a manner which is incompatible with such purpose(s). The fifth data protection principle requires that personal data shall not be kept for longer than is necessary for such purpose(s).

Section 33 provides that processing for research purposes is compatible with the purposes for which the data were collected, and the data may be kept indefinitely if the relevant conditions apply. These are:

- that the data are not processed to support decisions about individuals, and
- that substantial damage or substantial distress is not likely to be caused to any data subject

Personal data can be selected for permanent preservation, and stored, if these two conditions apply, on condition that the other data protection principles are complied with.

Note that The National Archives has registered personal data in transferred records to the Information Commissioner with a special purpose of processing of archival preservation.

Closure of personal information

The most common reason for records at archives services to be closed is that they contain personal information about an identifiable living individual and disclosure would breach one of the Data Protection Principles (and consequently is exempt under FOI exemption 40). Note that the name of a person may not in itself be enough to make the person identifiable and it usually depends on the context in which it appears or the presence of supplementary information enabling a person to be identified.

Usually such information falls within the DPA's definition of sensitive personal data, namely information on a data subject's:

- racial or ethnic origin
- political opinions
- religious, or other, beliefs
- trade union membership
- health (physical or mental)
- sex life
- offences, committed or allegedly committed
- details of proceedings for offences

The Information Commissioner's Office has issued guidance on what personal information should be considered exempt. Note that not all sensitive personal information need be withheld for the full lifetime of the data subject. The particular content and context of the information may allow earlier access. Guidance on closure periods should be applied on a case by case basis.

One difficulty is establishing whether the person to whom the information relates is still alive. In practice, in most circumstances it is usually impossible for a department or archives service to know if an individual is still living and impracticable for them to find out. The Advisory Council has recommended that a lifetime of 100 years should be assumed. Thus if a person is aged 30 in a 1950 record and the information should not be released during their lifetime, the closure period is until the end of 2020 (open on 1 January 2021).

If a person's age is not known, estimate the closure period. If it is obvious the person is an adult then the estimated age at the time of the record should be 16. If it is not obvious what age a person is from

contextual evidence then the full 100 year closure period should be used, for example, where it could be a child who is the victim of crime.

It may be possible from contextual evidence to reduce the closure period, for example because it is known a person has a professional qualification that requires several years of training or where a person is applying for a benefit such as a pension that has a minimum age. In these circumstances the closure period should be reduced accordingly.

Procedures for closure on transfer

Sensitivity review

Departments should consider sensitivity review as an integral part of the transfer process with the appropriate policies and procedures for identifying exempt information and consulting with other bodies.

Before records are transferred to The National Archives or an approved place of deposit, the transferring body must determine their access status (the sensitivity review).

The purpose of the sensitivity review is to:

- consider whether any information should be retained in the department instead of transferred to an archives service
- consider whether any information should be closed on transfer because one or more Freedom of Information exemptions apply
- consider whether any exempt information should nonetheless be released in the public interest
- confirm remaining information can also be released as no FOI exemptions apply

If the sensitivity review identifies information which should not to be released to the public because one or more FOI exemptions apply, the department should prepare an application schedule identifying this information precisely, citing the relevant exemption(s), explaining why the information should not be released and identifying a date at which either release would be appropriate or the case for release should be reconsidered. Departments should consider whether parts of records might be released if the sensitive information were redacted (blacked out -see Annex B on Redaction).

Steps in this process should include:

- consulting internally to determine whether the record is likely to contain sensitive information

- making an interim decision
- consulting externally, as appropriate, including with The National Archives if closure is proposed
- confirming or amending the closure decision and adding to the closure application

Where the information is environmental information, the application should cite the appropriate exception in the Environmental Information Regulations. If section 44 1(a) of FOIA is cited the relevant statute bar that prohibits disclosure should be cited.

When making access decisions it is important to:

- consider what security levels or classifications are on the record and whether these have short or long term implications
- consider what personal information is contained within the record and whether it still should be closed given the passage of time
- discuss closure with staff who are familiar with the records and any related sensitivity issues or legislative requirements
- consider the access status of similar records in archives services

The National Archives' closure application form is online in both [Word](#) and [Excel](#) format, it contains examples and guidance notes on completing it. The closure application must be submitted to The National Archives for review and advice prior to transfer. This must be before the records containing the information become historical records. The Advisory Council on National Records and Archives (known as the Advisory Council) will consider the case for withholding the records for a longer period.¹

The Advisory Council will respond as follows:

- by accepting that the information may be withheld and earmarking the records for release or re-review at the date identified by the department
- by accepting that the information may be withheld but asking the department to reconsider the date designated for release or re-review
- by questioning the basis on which it is deemed that the information may be withheld and asking the department to reconsider the case

¹ For more information about the role of the Advisory Council see www.nationalarchives.gov.uk/documents/ac_role.pdf and Annex A

Where records are being transferred to The National Archives or a place of deposit early (that is, ahead of the statutory deadline) and the intention is that they remain closed even after they become historical records, a similar application should be submitted prior to transfer explaining which exemptions apply and why. However there will be no formal review of these designations and the Advisory Council is not involved.

Opening of records

When an exemption has ceased to apply under section 63 of the FOIA the records will automatically become available to members of the public on the day specified in the finalised schedule (this is the schedule after it has been reviewed by the Advisory Council).

In other cases, if the authority concerned wishes further to extend the period during which the information is to be withheld in accordance with the FOIA, it should submit a further application explaining the continued sensitivity of the information. This is to be done before the expiry of the period stated in the earlier schedule. The Advisory Council will then review the application in accordance with the process described above.

Access restrictions can be withdrawn at any time if it becomes clear that the restriction is no longer appropriate. The relevant department should inform The National Archives if this is the case but be aware that other interested parties involved in the sensitivity review process for transferred records should also be consulted.

Records outside The National Archives

Places of Deposit

Section 4(1) of the [Public Records Act 1958](#) provides

If it appears to the Secretary of State that a place outside the Public Record Office affords suitable facilities for the safe-keeping and preservation of records and their inspection by the public he may, with the agreement of the authority who will be responsible for records deposited in that place, appoint it as a place of deposit as respects any class of public records selected for permanent preservation under this act.

The section continues, dealing with various local courts' records to be kept in the local area, and administrative arrangements for movement and transfer of records. The power to appoint places of deposit has been delegated to the Keeper of Public Records and his staff.

There are three different categories of places of deposit. The most numerous category is that of the local authority archives services, throughout England and Wales, holding public records (for example, court and hospital records) of strong local interest.

Some national institutions, such as the British Museum or the Imperial War Museum, are appointed to hold their own administrative records. They may also be appointed to hold specialist material such as public record films. The National Sound Archive, part of the British Library, holds government material in the form of sound recordings. The PRA s 5(5) imposes an obligation on those responsible for places of deposit to make arrangements for public access comparable with those for public records at The National Archives. There is guidance on [applying FOI to public records in places of deposit](#).

Places of deposit are expected to match as far as possible the standards found in The National Archives. These standards are set out in greater detail in the [Archive Service Accreditation: Standard May 2013](#).

Temporary return to the department

The PRA gives the Keeper various duties and responsibilities in relation to records. Section 4(6) gives the department or office that transferred the records the right to have them returned temporarily, either from The National Archives or a place of deposit. Departments are strongly encouraged to send back records as soon as possible, and keep them for an absolute maximum of one year. If open records which have been temporarily returned to the department are asked for by a reader at The National Archives, or at a place of deposit, they should be sent back to The National Archives or the place of deposit by the department as soon as possible.

Public records stored by contractors/specialist storage but in the custody of The National Archives

Some records require housing in special conditions. Section 2(4)(f) empowers the Keeper to make arrangements for such records to be kept under the required conditions at places outside The National Archives at Kew. For example, Public record films have been transferred to the British Film Institute's National Film and Television Archive (NFTVA). Access to the NFTVA material is in principle the same but records to be viewed must be ordered in advance.

Retention of public records by departments

Legal position

Section 3(4) of the [Public Records Act 1958](#) requires departments to transfer to The National Archives - or to an approved place of deposit - those records which have been selected for permanent preservation. This must take place by the time the records are 20 years old, unless departments receive authorisation to keep (retain) them for longer. Provision for retention is made in the second part of s3(4)

Provided that any records may be retained after the said period if, in the opinion of the person who is responsible for them, they are required for administrative purposes or ought to be retained for any other special reason and, where that person is not the Secretary of State, the Secretary of State has been informed of the facts and given his approval.

This provision refers not only to records selected for transfer and preservation but also to records not selected which departments need to retain for administrative use. Records cannot be retained without the Secretary of State's approval which is given only after applications have been reviewed by the Advisory Council. Retained records that have been selected for permanent preservation are listed in The National Archives catalogue.

The White Paper [Open Government \(Cm 2290, 1993\)](#) required departments to review retained records, other than those retained for administrative purposes, every ten years, and to consider whether actual damage would be caused by their release (that is if they were to be transferred as open to an archives service). This is achieved by retention being made for periods of ten years or less.

Note that retention of records is not open-ended and does not necessarily make them inaccessible to the public. Retained records are still subject to Freedom of Information requests, made to the department holding the records.

The only exception is for records held by those few bodies which are excluded from the operations of the Freedom of Information Act². For this reason the criteria for retention are not related to the exemptions under the FOIA.

² Bodies subject to the Scottish FOIA, the Security Service, the Secret Intelligence Service, the Government Communications Headquarters, units assisting GCHQ, and the special forces

Categories of retained documents

Administrative retention

Documents retained for administrative purposes fall into two categories. First are those which are in continued use. These could be maps relating to operations still under way, or contracts or leases which are still live. The second relates to records which will be transferred, in part at least, but the selection and sensitivity reviewing process has not been completed (backlogs).

Where records have been selected as suitable for permanent preservation, but are retained because of a continuing administrative need, departments are expected, wherever possible, to make them available to the public, and to inform the public of their availability. The Advisory Council now asks for details of such arrangements when considering applications of this type.

Where review, selection and transfer of records to The National Archives has not taken place before the records are 20 years old, the Secretary of State's approval is necessary to legitimise the retention of the records within a department.

This type of retention is the exception, not the rule, and the Advisory Council scrutinises such applications with particular care. The department will need to specify when it expects to have transferred the records and to satisfy the Council that sufficient resources are being made available for the backlog to be cleared in the stated period. The retention will only be authorised for the period needed to clear the backlog.

Retentions for 'any other special reason'

The Open Government White Paper indicated that retention for any other special reason, in the words of s3(4), is appropriate for records whose sensitivity is such that it cannot be estimated when the record may be released. In other words, the sensitivity is indefinite.

This provision has most commonly been used for national security records which remain classified. Consider redaction if the removal of a small portion of the record would enable the rest of the file to be transferred.

Blanket retentions

In some instances approval has been given for the retention of large categories of records of a similar character. The reasons for non-disclosure are the same for each record covered by such approvals. The

White Paper refers to these instruments as giving a 'blanket' approval to retain. Current instruments giving blanket approvals to retain include:

- security and intelligence material
- classified records of the Special Branch of the Metropolitan Police before 1985
- records relating to defence applications of atomic energy
- personal records of civil servants created before 1985
- personal records of the members of the armed forces and Home Guard created before 1990
- Teachers' pensions files and teachers' misconduct files created between 1914 and 1978

Previous blanket approvals were given in relation to various defence matters, but these have expired and have not been renewed.

The most widely used blanket is that relating to intelligence and security. It covers records held by or on behalf of the Government Communications Headquarters (GCHQ), the Secret Intelligence Service (SIS) and the Security Service, and other records which relate to security or intelligence service activities, and which are held by the agencies themselves or by any other department. Details of this [blanket](#) have been published.

However, the White Paper indicates that intelligence-related documents held in other departments are to be reviewed in the normal manner and released if they are no longer sensitive. There is no obligation to retain all material which could fulfil the criteria of the instrument; the blanket is an administrative tool to avoid the need for a long list of itemised applications to retain records. Some records previously held by GCHQ and the Security Service have been transferred to The National Archives.

Guidelines on retention

The 1993 White Paper imposed the requirement that the Advisory Council should see and advise the Lord Chancellor (subsequently the Secretary of State) on applications to retain records. The public must be told which of these reasons applies to the records unless to do so would put at risk the information which has led to the material being withheld. The Advisory Council will require sufficient detail about the records to be satisfied that the retention is proper. The Advisory Council uses an aide-memoire of commonly cited grounds for retention, which is based on the previous practice of the Council.

This table provides a summary of the most common grounds for retention. The numbers below are those used on applications to the Advisory Council. Normally a retention period of up to five years is granted when grounds 1 - 5 or 7 are satisfied and up to ten years for ground 6.

Number	Grounds for retention
1	Records or series of records which have not been selected for transfer to The National Archives or a place of deposit, but which the department has retained after they are defined as historical records because they are required for its own administrative purposes
2	Records or series of records that have been selected for transfer to The National Archives or place of deposit but are still required for administrative purposes
3	Series of records which are known to contain items that are defined as historical records, but which it is more effective to treat as a unit for appraisal purposes to review at a later date related to the age of other records in the series
4	Records or series of records which form part of a backlog awaiting appraisal or preparation for transfer
5	Records or series of records which have been retained for the writing of official histories
6	Records retained in departments on security or other specified grounds
7	Records of international organisations for which there is not yet any agreement for release

Annex A Advisory Council on National Records and Archives

The Public Records Act (PRA) provides

(2) There shall be an Advisory Council on Public Records to advise the Secretary of State on matters concerning public records in general and, in particular, on those aspects of the work of the Public Record Office which affect members of the public who make use of the facilities provided by the Public Record Office.

The Master of the Rolls shall be chairman of the said Council and the remaining members of the Council shall be appointed by the Secretary of State on such terms as he may specify.

[(2A) The matters on which the Advisory Council on Public Records may advise the Secretary of State include matters relating to the application of the Freedom of Information Act 2000 to information contained in public records which are historical records within the meaning of Part VI of that act.]

(New subsection inserted by [Freedom of Information Act 2000](#) (c36), Schedule 5, paragraph 1)

The function of the Advisory Council on National Records and Archives is to advise the Secretary, and through him other ministers as appropriate, on all matters relating to records and archives in the United Kingdom and in particular in England and Wales. It is chaired by the Master of the Rolls.

Among the Council's most important tasks are issues around access to public records. Under the FOIA, the Advisory Council is responsible for advising the Secretary of State on the application of the act to historical public records. In particular this involves acting for the Secretary of State in advising government departments on the relative strengths of the public interest in the release of particular records and the public interest in their non-disclosure.

In addition, the Council reviews applications from departments for the retention of public records under the PRA. The Secretary of State never signs a retention instrument until he has received advice on it from the Council. The justification for the use of FOI exemptions and for retentions is scrutinised closely, and departments are often asked for further information. This reconsideration can lead to a document being made available after all. If the Council cannot reach a decision by any other means, it may ask the Master of the Rolls to nominate a member to inspect documents and make recommendations.

The National Archives' website has more information about [the work of the Advisory Council](#).

Annex B Redaction

Redaction is the separation of disclosable from non-disclosable information by blanking out individual words, sentences or paragraphs or removing whole pages or documents prior to the release of the record. In the paper environment some organisations will know redaction as extracts when whole pages are removed, or deletions where only a section of text is affected. Information that is redacted but transferred to The National Archives would form an extract that is entered onto the catalogue, and so may be the subject of an FOI request to review its 'closed' status.

Part 2 of the code of practice on the management of records under section 46 of the FOIA advises departments to consider the redaction of public records on transfer if this means parts of records can be released. Separate [guidance on redacting records](#) is available.

Time spent on redaction of a record should be proportionate to its historical value and the resources available for preparation of transfer as a whole. When considering the redaction for transfer to archives (as opposed to in response to FOI requests) there is no definitive policy on when redaction is necessary and departments should be aware that devoting large amounts of resource to heavy redaction in one series of records may significantly delay the transfer of other open records for public use and compliance with the PRA.

When redaction is being considered several factors should be taken into account as to whether to redact and how to do it. The department must consider at what point does the level of required redaction and the nature of the information justify individual word deletions, whole-page extraction, or closure of the whole record instead. Departments may need to reconsider the balance if redaction of individual records takes more than two hours. Factors involved are:

Loss of meaning - the ultimate test is whether or not redaction will result in a record that still has meaning. It is difficult to quantify this in terms of percentages as it will depend on the nature of the information but if more than a third needs removing from a document then the department should check that the releasable information is likely to make sense to a researcher.

Likely level of public interest - when a high-profile subject appears on The National Archives' catalogue, whole record closure or retention is likely to prompt FOI requests from the public to such records, probably requiring redaction soon after transfer if not all the record is exempt. It would be more manageable to do such extractions/redactions before transfer, without the statutory deadlines of processing

an FOI request, so a record on a major historical event might justify considerably more than 2 hours' effort on redaction before transfer if the content is of high public interest whereas it may be difficult to justify spending considerable time redacting files if they are likely hardly ever to be consulted.

Effort required to redact - what is the quantity of information that requires redaction? If it is a significant proportion then the whole record can be closed. This must to some extent be considered proportionately to the size of the piece - one hour spent on a slim report may be excessive, whereas on a 400-page file it may not. Removing pages as extracts make be quicker than making individual deletions on pages but how much meaning would be left in a file after the deletions? Batching redacted pages from one record into manageable numbers of items for cataloguing purposes is preferable.

Risk of error - redaction always carries the risk of something sensitive being overlooked, and therefore inadvertently released. High volumes of redaction within a single piece increase the risk of a slip in concentration, and especially where it is repetitive (for example, 'delete all references to the following names..[people/places]...'). A high volume of scattered but repetitive sensitivities should be considered a high risk, and it may be safer to extract whole pages. Departments should consider how experienced staff are at redaction and what the possible consequences of human error are if mistakes are made.

Annex C Closed descriptions

It is recognised that very occasionally a catalogue description may be considered exempt under FOI and should be withheld from the public until the record becomes open (for example, the names of victims of sexual assault that are protected by law). In such cases, the records involved should be catalogued in the ordinary way and departments should then indicate clearly on the transfer form the numbers of the records which are to have their descriptions withheld. The scope/content will not be added to the catalogue at The National Archives (although the archival reference will) and will be held in secure conditions until the record(s) become open. At this point the full description will be added to the catalogue. It is preferable in the meantime if some form of alternative to the full description can be displayed rather than leaving it completely blank, for example 'Mental Health hospital patient case paper, not full description, name withheld'. However, the record will still be displayed as a closed record with closed description until the full description is released.

Annex D Statute bars

The release of some information is prohibited by provisions contained in legislation (such as acts, rules, regulations, orders) known as statute bars. Usually such prohibitions apply to the collectors of information and cease to apply when they transfer the custody of the records to The National Archives although the records may still be closed under other FOI exemptions. Some bars have time limits (sunset clauses) so that they do not apply to information over a specified age eg for the lifetimes of individuals concerned. When FOI was implemented the Department for Constitutional Affairs (now the Ministry of Justice) conducted a [review of statute bars](#) to see which were no longer required or whether their terms should be varied. FOIA s 75 contains a power to repeal or amend statutory bars to access that existed before November 2000 by Order. Specifically section 75 allows the Secretary of State to relax or remove aspects of laws that have a section 44 prohibition via a Statutory Instrument. There has been one such SI to-date (SI [2004/3363](#)).

There remain some pieces of legislation that currently contain a permanent statute bar on the disclosure of information, even following a transfer of custody of the records to The National Archives. The existence of such prohibitions does not exempt those organisations responsible for public records from statutory obligations under the *Public Records Act 1958*. Under the act arrangements must still be made for the selection of those records which ought to be permanently preserved, and for the safe-keeping of records until they are disposed of through a transfer of custody or destruction.

The National Archives does not collect public records to which there is no defined timeframe for public access. Those records deemed worthy of permanent preservation should be retained by the responsible organisation with the agreement of the Secretary of State if required until such time as a transfer can occur. This would be facilitated by the addition of a sunset clause by the legislative owners, and it is the responsibility of those retaining such records to initiate this contact with the support of The National Archives.

Annex E List of URLs in this document

Purpose of toolkit

Environmental Information Regulations 2004

www.legislation.gov.uk/uksi/2004/3391/contents/made

Freedom of Information Act 2000

www.legislation.gov.uk/ukpga/2000/36/contents

What are public records, and who is responsible for them?

Constitutional Reform and Governance Act 2010

www.legislation.gov.uk/ukpga/2010/25/contents

Environmental Information Regulations 2004

www.legislation.gov.uk/uksi/2004/3391/contents/made

Freedom of Information Act 2000

www.legislation.gov.uk/ukpga/2000/36/contents

Code of practice on the management of records under section 46 of the Freedom of Information Act

www.justice.gov.uk/information-access-rights/foi-guidance-for-practitioners/code-of-practice

Public Records Act 1958

www.legislation.gov.uk/ukpga/Eliz2/6-7/51/contents

The Transfer of Functions (Information and Public Records) Order 2015

<http://www.legislation.gov.uk/uksi/2015/1897/contents/made>

Principles for determining access status of records on transfer

DEFRA guidance on Environmental Information Regulations

www.archive.defra.gov.uk/corporate/policy/opengov/eir/index.htm

ICO guidance on exemptions

<https://ico.org.uk/for-organisations/guide-to-freedom-of-information/refusing-a-request/>

Public Records Act 1958

www.legislation.gov.uk/ukpga/Eliz2/6-7/51/contents

White Paper, Open Government (Cm 2290, 1993)

www.official-documents.gov.uk/document/cm22/2290/2290.pdf

Freedom of information exemptions

Freedom of Information Act 2000

www.legislation.gov.uk/ukpga/2000/36/contents

Public Records Act 1958

www.legislation.gov.uk/ukpga/Eliz2/6-7/51/contents

Summary of FOI Exemptions

Constitutional Reform and Governance Act 2010

www.legislation.gov.uk/ukpga/2010/25/contents

Freedom of Information (Definition of Historical Records) (Transitional and Saving Provisions) Order 2012

<http://www.legislation.gov.uk/uksi/2012/3029/contents/made>

Data Protection and personal information

Code of practice for records managers and archivists under s 51(4) of the Data Protection Act 1998

www.nationalarchives.gov.uk/documents/information-management/dp-code-of-practice.pdf

Data Protection Act 1998

www.legislation.gov.uk/ukpga/1998/29/contents

Procedures for closure on transfer

The National Archive's closure application form – Word version

www.nationalarchives.gov.uk/documents/information-management/closure-at-transfer-application-form.doc

The National Archive's closure application form - Excel version

www.nationalarchives.gov.uk/documents/information-management/closure-at-transfer-application-form-paper.xls

The role of the Advisory Council

www.nationalarchives.gov.uk/documents/ac_role.pdf

Records outside The National Archives

Guidance on applying FOI to public records in places of deposit

www.nationalarchives.gov.uk/documents/information-management/foi_guide.pdf

Public Records Act 1958

www.legislation.gov.uk/ukpga/Eliz2/6-7/51/contents

Archive Service Accreditation: Standard May 2013

<http://www.nationalarchives.gov.uk/documents/archives/archive-service-accreditation-standard-june-2013.pdf>

Retention of public records by departments

Public Records Act 1958

www.legislation.gov.uk/ukpga/Eliz2/6-7/51/contents

White Paper, Open Government (Cm 2290, 1993)

www.official-documents.gov.uk/document/cm22/2290/2290.pdf

The Security and Intelligence Instrument with notes

<https://www.gov.uk/government/publications/signed-instrument-for-the-retention-of-public-records>

Annex A

Advisory Council

www.nationalarchives.gov.uk/advisorycouncil/?source=ddmenu_about5

Freedom of Information Act 2000

www.legislation.gov.uk/ukpga/2000/36/contents

Annex B

Redaction

www.nationalarchives.gov.uk/documents/information-management/redaction_toolkit.pdf

Annex D

Department of Constitutional Affairs Review of Statute Bars

<http://webarchive.nationalarchives.gov.uk/+/http://www.dca.gov.uk/StatutoryBarsReport2005.pdf>

Statutory Instrument SI 2004/3363

www.legislation.gov.uk/uksi/2004/3363/made