

# **Agreement on Co-operation between the Information Commissioner's Office and The National Archives on Information Access and Re-use Complaint Handling and Wider Regulatory Activity**

## **Information Access and Re-use: Complaint Handling and Wider Regulatory Activity**

### **Introduction**

1. This Agreement on Co-operation (Agreement) operates under the Memorandum of Understanding between the Information Commissioner and the Chief Executive of The National Archives.
2. The Agreement describes the basis on which The National Archives (TNA) and the Information Commissioner's Office (ICO) will co-operate as regulators of access to and re-use of public sector information. This will cover the handling of complaints, the formulation of policy and the provision of guidance.
3. We acknowledge that this Agreement may require amendment in the light of experience and evolving practice. It will, therefore, be subject to periodic review. This is an open document published on our respective websites.

### **Legal Framework**

4. TNA has a central policy role in promoting best practice and in the provision of guidance and advice to the public sector on compliance with the Public Sector Information Regulations (PSI). It is also responsible for the management and licensing of Crown copyright information. Under PSI, the Office of Public Sector Information (OPSI), part of TNA, has responsibility for handling complaints in connection with the re-use of public sector information. OPSI also regulates public sector information traders under the Information Fair Trader Scheme and offers a mediation service.
5. The ICO has responsibilities for promoting good practice by public authorities on access to information under the Freedom of Information Act (FOI). One of the key responsibilities is considering complaints under FOI. FOI was amended in 2012 to cover the communication of certain datasets for re-use and the relevant section 45 Code of Practice will be revised accordingly. The ICO also has regulatory responsibilities under the Environmental Information Regulations (EIR) and the Data Protection Act (DPA).

### **Purpose of the Agreement**

6. In broad terms the ICO's responsibilities under FOI, EIR and DPA focus on access to information, whereas TNA's responsibilities under PSI relate to the re-use of information once access has been granted under information access legislation or because information is already accessible. The boundaries between

access and re-use are not, however, always clear cut. This is particularly so regarding the ICO's jurisdiction for access and re-use complaints for datasets within the scope of the amended sections 11, 11A and 19 of FOI. It is important, therefore, that there is an understanding between us concerning our respective responsibilities. It is particularly important that complaints received are handled by the appropriate organisation, but with the benefit of advice from the other.

7. The ICO and TNA are committed to working together insofar as their separate regulatory roles permit. They will share knowledge, expertise, best practice and intelligence in relation to matters of mutual interest, and will consult as appropriate in the development of policy.

## **Process**

8. Where appropriate and feasible, both parties may consult with and assist each other.
9. The parties will seek to alert each other as soon as practicable to relevant developments within their area of responsibility, subject to complying with any relevant legal requirements applying to the disclosure of information.
10. In producing guidance for publication, we will consult and share information with each other as appropriate
11. When formulating policy that overlaps with the other's responsibility we will consult each other.
12. In handling complaints, we will co-operate with each other as appropriate within the limits of our statutory responsibilities e.g. section 59 of the DPA (in the case of the ICO) and the law of confidentiality. The complainant will be informed of any such co-operative action taken in relation to their complaint. Co-operation may be particularly appropriate in the handling of complaints relating to the re-use of datasets as defined in sections 11, 11A and 19 of the revised FOI
  - If one party receives a complaint that clearly relates to the area covered by the other, rather than their own, they will discuss this with the other party as appropriate and redirect the complainant to the other party.
  - If one party receives a complaint that touches on areas covered by both parties, they will inform the other party and both will agree who will deal with which aspects of the complaint. The parties will keep each other informed of progress as appropriate.
  - If one party receives a complaint that is more relevant to another organisation they will refer the complainant to that organisation. For example, a complaint that raises competition issues may be more appropriate for the Office of Fair Trading. See the Memorandum of Understanding with OFT, between TNA and the Office of Fair Trading
13. Sections 11A(3) and (4) and 19 (2B) and (2C) FOI allow a public authority to charge for re-use of a dataset. Fees regulations may apply to this and will be regulated by the ICO. When necessary the ICO will seek advice from TNA to

ensure consistency in approach and to make use of TNA expertise, particularly regarding the charging and licensing provisions.

14. Where a public sector body makes representations to TNA or the ICO that the information requested does not fall within the scope of sections 11, 11A or 19 FOI, but the complainant maintains that those provisions do apply, TNA and ICO will consider whether they need to liaise to understand any different views on applying the dataset provision. Each party will ultimately have to make their own decision.

#### **Duration and Review of Agreement**

15. This Agreement will commence on the date on which it is signed by both parties and will continue for five years. Either party can terminate it within that period by giving written notice of three months. Both parties will review the g annually, and propose any amendments at that time. Amendments will not take effect until agreed by both parties.

Information Commissioner

Chief Executive of The National Archives



Christopher Graham

Oliver Morley

Date 17/1/2013

This Agreement may be executed in any number of counterparts or duplicates, each of which is an original and which, in the case of counterparts, together have the same effect as if each party had signed the same document.

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