

What to do if your public body is being privatised

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Contents

1	Introduction.....	3
1.1	What is the purpose of this guidance?.....	3
1.2	Whom is this guidance for?	4
2	What do to if your public body is being privatised.....	4
2.1	The joint information transition team.....	5
2.2	Action plan	6
2.3	The information survey.....	13
2.4	Reviewing your records to assess value	14
2.4.1	Records for permanent preservation	14
2.4.2	Records with ongoing business value	15
2.4.3	Ephemeral records.....	16
2.5	Assigning ownership of records.....	17
2.6	Preserving publicly available material.....	18
2.6.1	Websites	18
2.6.2	Datasets.....	18
2.6.3	Maintaining usability through and after transfer	19
2.7	Post-privatisation.....	20
3	Further reading.....	20
3.1	Public Record Bodies.....	20
3.2	Conducting an information survey	20
3.3	Copyright	20
3.4	Transferring digital records.....	21

1 Introduction

The National Archives is the central advisory body on the care of records and archives, in all media, from creation to long-term preservation. We provide advice to government departments and the wider public sector on the management of digital and paper records, and their selection and transfer to The National Archives.

This guidance forms part of a suite of guidance that The National Archives is delivering to support information management across government and the public sector.

1.1 What is the purpose of this guidance?

This guidance provides a plan for the actions you must take to manage information if your public body is being privatised. It will help you to understand your obligations for the long term preservation of your Public Records and also to make sure that your successor organisation has access to the information it needs to function.

This guidance complements Machinery of Government Changes: Guidance on Transfer of Records, Information and Knowledge¹. This guidance gives more detailed guidance on how to transfer information, whether you are transferring to The National Archives, your parent government department, another department or agency, or to a private body. Guidance on other key implementation challenges is available from the Cabinet Office and from The National Archives.

¹ nationalarchives.gov.uk/documents/information-management/machinery_of_government.pdf

1.2 Whom is this guidance for?

This guidance is primarily aimed at Departmental Records Officers² (DROs) or the equivalent role in your organisation. It may also be useful for Heads of Knowledge and Information Management, Senior Information Risk Owners, change or project managers, that is, anyone within your organisation responsible for managing information risk, or managing change.

2 What do to if your public body is being privatised

If your public body is being privatised, your information needs to be properly disposed of or transferred to another organisation (either your parent department, or a successor body). You need to build this into your planning at the earliest stages. If you are the Departmental Records Officer (DRO) for the public body being privatised, get in touch with your parent department's DRO and The National Archives³ as soon as you can, to discuss the future management of, and access to, your records.

Department or agency records created prior to privatisation will remain public records after privatisation.

They must be safeguarded according to obligations laid down by the Public Records Act, the Freedom of Information Act, and any other relevant

² A departmental records officer (DRO) is responsible for looking after an organisation's records and information

³ Please email: information.management@nationalarchives.gov.uk

legislation or codes of practice. Make sure that your successor body is aware of these requirements⁴. Get specialist advice on the management of records held by approved Places of Deposit from The National Archives as soon as you are aware of proposals for privatisation.

You must discuss ownership and access rights with your parent department and consult your parent department's legal and legislative teams as soon as possible to finalise ownership, copyright and intellectual property requirements. See 2.5 for further information.

When a function or body is privatised, loss of staff and expertise will be extensive and sudden. It is vital to take early decisions on the disposal of records and the sensitivity of selected records while the expertise is still available.

2.1 The joint information transition team

The first action you need to take is to establish a joint information transition team including officials from the public body, the parent department and the successor organisation (if possible) and include expertise from information management, information technology, information assurance and change management. This will help you to ensure that information is protected and usable after transition. Your joint information transition team is responsible for information management before, during and after the transition programme.

⁴ nationalarchives.gov.uk/information-management/legislation/public-records-system.htm

2.2 Action plan

Action	Responsibility	Evidence of completion
<p>Set up a Joint Information Transition Team</p> <ul style="list-style-type: none"> • Include expertise from a range of disciplines • Include people from the public body • Include people from the parent department • Include people from your successor body (if possible) 	<ul style="list-style-type: none"> • Heads of KIM, Departmental Records Officers (DROs) in parent department, public body and successor body 	<ul style="list-style-type: none"> • Team established • Terms of reference documented and agreed • Parent department commits to team remaining in place after privatisation, until all actions are completed and responsibility transferred to the parent department's DRO
<p>Get in touch as soon as you hear you may be being privatised</p> <ul style="list-style-type: none"> • Contact The National Archives • Contact the Departmental Records Officer (DRO) of your parent department 	<ul style="list-style-type: none"> • DRO in public body, or Head of Knowledge and Information Management (KIM) 	<ul style="list-style-type: none"> • Contact made

<p>Carry out a comprehensive information survey</p> <ul style="list-style-type: none"> • Document your records, their business and operational use and the technology that supports them; legal requirements and intellectual property rights for each record. Perform a sensitivity review. (2.3) • Share the results with the DRO of your parent department 	<ul style="list-style-type: none"> • DRO for public body with guidance from DRO of parent department 	<ul style="list-style-type: none"> • Information survey documented • Major record series identified prior to privatisation • Public record status agreed
<p>Categorise your records</p> <p>Each record must be categorised:</p> <ul style="list-style-type: none"> • Does it have historical value, requiring permanent preservation? • Is it required by the successor body? • Is it required by the parent department? • Is it ephemeral (with no historical or business value)? • <p>The answer may be no to all, yes to all, or a mixture of the two. (2.4)</p> <p>When categorising your records, think about legal requirements, intellectual property rights and operational requirements.</p>	<ul style="list-style-type: none"> • DRO for public body and The National Archives 	<ul style="list-style-type: none"> • Records categorised and documented on information survey

Decide on the action(s) required for each record:			
<ol style="list-style-type: none"> 1) Transfer to parent department for permanent preservation as a public record 2) Transfer to parent department for ongoing business use 3) Successor body to agree access rights/loan arrangements 4) Dispose of record 		<ul style="list-style-type: none"> • DRO for public body, The National Archives 	<ul style="list-style-type: none"> • Actions recorded on information survey
1) Transfer records to parent department for permanent preservation	<ul style="list-style-type: none"> • Records with permanent value transferred to the parent department prior to privatisation 	<ul style="list-style-type: none"> • DRO in public body transfers documents to parent department • Transition team is responsible for ensuring transferred records are still usable as required 	<ul style="list-style-type: none"> • DRO in parent department transfers records for permanent preservation to The National Archives or other approved Place of Deposit in due course
	<ul style="list-style-type: none"> • Agree ownership, legal requirements and intellectual property rights with the parent department 	<ul style="list-style-type: none"> • DRO of parent department 	<ul style="list-style-type: none"> • Ownership of records agreed prior to privatisation. IAO assigned • Public record status agreed

	<ul style="list-style-type: none"> • Clarify copyright and database right status of the new body • Assign non Crown Copyright to successor body or the Controller of HM Stationery Office at The National Archives 	<ul style="list-style-type: none"> • DRO of public body, in consultation with your legal and legislative teams 	<ul style="list-style-type: none"> • Copyright and database rights assigned and documented
	<ul style="list-style-type: none"> • If successor body requires access to the record agree access rights or loan arrangements with the parent department prior to privatisation 	<ul style="list-style-type: none"> • Successor body agrees access/loan rights with DRO in parent department consulting The National Archives where appropriate 	<ul style="list-style-type: none"> • Documented loan agreement
<p>2) Transfer records to parent department for ongoing business use</p>	<ul style="list-style-type: none"> • Agree ownership, legal requirements and intellectual property rights of transferred records with the parent department 	<ul style="list-style-type: none"> • DRO of public body and DRO of parent department, and legal and legislative teams in parent department 	<ul style="list-style-type: none"> • Ownership of records agreed prior to privatisation

	<ul style="list-style-type: none"> • Agree with your parent department if your successor body can have a copy of the records for ongoing business use 	<ul style="list-style-type: none"> • Successor body agrees access/loan rights with DRO in parent department 	<ul style="list-style-type: none"> • Access/loan arrangements agreed prior to privatisation
	<ul style="list-style-type: none"> • Transfer records to parent department 	<ul style="list-style-type: none"> • DRO in public body transfers them to parent department (with a copy to successor body if agreed) 	<ul style="list-style-type: none"> • Records are transferred in a way that ensures that they are still usable as required
<p>3) Transfer records to successor organisation for ongoing business use</p>	<ul style="list-style-type: none"> • Transfer to the successor body via statutory instrument, transitional agreement, Memorandum of Understanding or similar 	<ul style="list-style-type: none"> • DRO of public body reviews records • DRO in parent department and successor body agree transfer processes (statutory instrument, or other agreed mechanism) 	<ul style="list-style-type: none"> • Agreement between parent department and successor body on management, transfer, ownership and access to records – prior to privatisation • Records are transferred in a way that ensures that they are still usable as required

<p>4) Delete unrequired records</p>	<ul style="list-style-type: none"> Dispose of ephemeral records appropriately and securely 	<ul style="list-style-type: none"> DRO in public body 	<ul style="list-style-type: none"> Records disposed of appropriately prior to privatisation
<ul style="list-style-type: none"> Agree who has the authority to retrieve and provide access to records once they are transferred to The National Archives, including who assists in FOI enquiries 		<ul style="list-style-type: none"> DRO in parent department agrees access with The National Archives 	<ul style="list-style-type: none"> Parent department DRO and The National Archives agree access to closed records prior to privatisation
<p>Preserve publicly available material</p> <ul style="list-style-type: none"> Ensure websites are captured into the UK Government's web archive 		<ul style="list-style-type: none"> DRO in public body informs The National Archives' web archiving team of need to capture website no later than six weeks prior to privatisation NB: any web content added after this date will not be archived 	<ul style="list-style-type: none"> Website captured into UK Government Archive

<ul style="list-style-type: none"> • Archive datasets as part of your website capture, or transfer them to your parent department. Investigate any planned updates to datasets • If they are yet to be published, ensure they are posted to your website before the date of the final website capture • Document the technical dependencies; make arrangements for transfer of technology, licences and documentation if needed. Collect and transfer information on how the data was captured processed and arranged 	<ul style="list-style-type: none"> • DRO in public body informs The National Archives' web archiving team of need to capture dataset(s) no later than six weeks prior to privatisation. • DRO in public body transfers unpublished datasets 	<ul style="list-style-type: none"> • Datasets captured as part of the website capture. Unpublished Datasets transferred to your parent department prior to privatisation
<ul style="list-style-type: none"> • Identify documents made available for public inspection, agree if they are still required, and make them available through appropriate sources 	<ul style="list-style-type: none"> • DROs in public body and parent department agree documents required after privatisation 	<ul style="list-style-type: none"> • Documents previously made available for public inspection available through appropriate sources after privatisation
<ul style="list-style-type: none"> • Agree selection and disposal of unpublished reports 	<ul style="list-style-type: none"> • DRO in public body and The National Archives agree selection and disposal of unpublished reports 	<ul style="list-style-type: none"> • Reports disposed of, or transferred to The National Archives or your parent department, as agreed, prior to privatisation

2.3 The information survey

Your comprehensive information survey should include the information creator, the current owner, the format, and how the information needs to be used. By 'used' we mean how to find, open, work with, understand and trust your information. For digital information this must include the main software formats and an inventory of all IT hardware and software used for managing and disseminating information (including servers, hard drives, laptops, data sticks, databases, internet/intranet and information held by other organisations).

The information survey should cover:

- documentation and records
- email and communication logs
- database and/or file lists
- organisation charts
- contracts with external storage [paper/electronic] organisations
- previous information surveys/inventories

The survey should cover all the areas information could be stored in and information in all media – both physical filing locations and digital ones. Take particular care with personal filing systems, which may contain both original records and 'working copies'. These must be evaluated by the individual members of staff alongside information management teams and re-integrated into the main information repositories or disposed where appropriate.

You may have existing surveys or inventories that you can build upon, such as an information asset register or a configuration management database

(CMDB). The National Archives has produced a range of guidance that can help you to document your information and IT assets⁵.

You must review the sensitivity of records of historical value *before* your public body is privatised. This means you must identify information that may be exempt from disclosure under the Freedom of Information Act and the Environmental Information Regulations (EIR). You must note categories of records with particular storage and handling requirements, for example, sensitive personal data or protectively marked material. Further guidance on reviewing records for sensitivity is available from the Ministry of Justice and the Information Commissioner's Office.⁶

2.4 Reviewing your records to assess value

Every record must be assessed for potential historical value and ongoing business value.

2.4.1 Records for permanent preservation

- Identify records of historical value that clearly merit permanent preservation. These will eventually need to be transferred to The National Archives or an approved Place of Deposit.⁷ Consult The National Archives on the method of selection and review.
- Carry out an accelerated second review on these records and transfer them to your parent department who will safeguard them until they are sent to The National Archives as part of a planned transfer.

⁵ Guidance is available at nationalarchives.gov.uk/information-management/our-services/digital-continuity.htm

⁶ www.justice.gov.uk/guidance/foi-exemptions-guidance.htm
www.ico.gov.uk/tools_and_resources/document_library/freedom_of_information.aspx

⁷ There is a general statutory duty "to make arrangements for the selection of those records which ought to be permanently preserved and for their safe-keeping". This is to be done under National Archives' supervision. Section 3(1) and (2) of the [Public Records Act 1958](#)

- Your parent department will need to identify officials who are authorised to retrieve and provide access to any selected records when they are eventually transferred to The National Archives. This will include officials responsible for assisting in FOI enquiries.

If the successor body want access to records of permanent value that are being transferred to the parent department, they have to requisition them. Ideally the access and loan rights should be agreed with the parent department prior to privatisation.

In most cases the successor body should be given a copy of the record. If this is not possible due to size or cost limitations a formal loan agreement for the original records should be agreed. The agreement should outline access restrictions and should stipulate that requisitioned originals are not damaged in any way, that nothing is added or removed, and that the records are returned as soon as they are finished with, and not later than one year after requisition.

If the record has been subsequently transferred from the parent department to The National Archives or another Place of Deposit, the request must still go via the parent department.

Access to records of permanent value is something that you may need to discuss on a case-by-case basis with your parent department, the successor body and The National Archives.

2.4.2 Records with ongoing business value

Records with ongoing business value may be required by your parent department or by the successor organisation (or both).

If both the parent department and the successor body want the records: transfer them to your parent department. Make arrangements for transfer of

technology, licences and documentation if needed. The successor body will need to agree access and loan rights with your parent department, and in some cases they may be given a copy of the record. This is something you should discuss on a case-by-case basis with your parent department, the successor body and The National Archives.

If you do not yet know who your successor body is, you should flag to your parent department that they will need to agree access or loan rights with the successor body once they come into existence.

If the successor body wants access to open public records that have already been transferred for permanent preservation: they can requisition copies from The National Archives or other Place of Deposit. If copies are not available due to size or cost limitations, the relevant bodies must sign a formal loan agreement. See 2.4.1. If the successor body wants access to closed public records, they must discuss this with the parent department.

If just the successor body wants the records: you should agree this with your parent department and The National Archives, and transfer records via statutory instrument (or similar, for example a Memorandum of Understanding). You can find more information about transferring records in this way in our guidance: Machinery of Government Changes: Guidance on Transfer of Records, Information and Knowledge⁸

2.4.3 Ephemeral records

Records not deemed worthy of permanent preservation, and not required by government or the successor body, should be securely disposed of according to approved retention policies.

⁸ nationalarchives.gov.uk/documents/machinery_of_government.pdf

2.5 Assigning ownership of records

Discuss ownership of records with your parent department's legal and legislative teams as soon as you can, and finalise ownership before your public body is privatised⁹. Then assign copyright. Information and databases produced by Crown bodies are subject to Crown Copyright and Crown Database protection which is centrally managed by the Controller of HM Stationery Office.¹⁰

The copyright in records and databases created by non-Crown bodies can be assigned to your successor body or to the Controller of HM Stationery Office, who will then allow the material to be made available for re-use. You should agree this with your parent body and The National Archives prior to privatisation.

If you're not sure whether you are a Crown body or a non-Crown body, please refer to Information Policy team at The National Archives. Crown bodies include central government departments, NDPBs and Executive Agencies.

Before you are privatised, you must agree the status of your records with your parent body, and ensure your successor body is aware of this. This means

⁹ Copyright and related rights
nationalarchives.gov.uk/documents/information-management/copyright-related-rights.pdf

¹⁰ Information and databases produced by Crown bodies are subject to Crown copyright protection under s163 [Copyright, Designs and Patents Act 1988](#) or [for databases] under s14 (3) of the [Copyright and Rights in Databases Regulations 1997](#). Crown copyright and database right are managed centrally by the Controller of HM Stationery Office [an official within The National Archives], who is also responsible for the [Re-use of Public Sector Information Regulations 2005](#).

agreeing and documenting what remain public records after transfer. Note that any records owned by your parent body are automatically public records.

2.6 Preserving publicly available material

Before your body is privatised, consider archiving/capturing websites, datasets, information made available for public inspection, and published/unpublished reports.

2.6.1 Websites

All central government websites (including those of arms'-length bodies) are routinely captured and archived by The National Archives. Your information survey should include websites and you should determine whether you need any supplementary web archiving. If so, discuss at the earliest opportunity with the National Archives Web Archiving team. For more information on website archiving and managing website content see web guidelines TG105 and TG125, produced by the Central Office of Information (COI)¹¹.

2.6.2 Datasets

According to the government's transparency agenda, all datasets not containing sensitive data should be published on the organisation's website, in a format that will enable them to be captured into the UK Government's web archive. Before privatisation, as part of the information survey, datasets should be reviewed and published wherever possible. Datasets that are too sensitive to publish, but which have been selected for permanent preservation, should be transferred to your parent department in a usable format— along with any supporting information (see the chart on page 7 for more detail). Your parent department should maintain the dataset until the

¹¹ coi.gov.uk/guidance.php?page=239, coi.gov.uk/guidance.php?page=265

sensitivity falls away. You must transfer data according to the recommendations in Data Handling Procedures in Government Final Report.¹²

2.6.3 Maintaining usability through and after transfer

It is vital that the usability of the records is not lost during transfer to the parent body or to the successor organisation. You must maintain the continuity of your information so that you do not lose the ability to find, access, work with, understand and trust the information in the way that you need. For paper records this may mean maintaining filing structures, listing files, or updating catalogues.

For digital records maintaining the continuity of the information may mean transferring or replicating entire technology support systems – it is not enough to transfer the digital files themselves if the recipient does not have the software or hardware to open the files. This is something you need to discuss and agree with your parent department at the earliest opportunity.

These issues must be covered by the information survey and you should consult Information Asset Owners, Knowledge and Information Managers, Information Assurance Managers, change managers and IT service providers (both in-house and external) to agree how records need to be used after transfer, and take the actions required to maintain that use.

The National Archives has a Digital Continuity Service that anyone in the public sector can use to help manage your digital information through changes.¹³ This includes guidance, technical tools and services, risk assessment, and a free file profiling tool called DROID.

¹² www.cesg.gov.uk/products_services/iatp/documents/data_handling_review.pdf

¹³ The Digital Continuity Service is available from nationalarchives.gov.uk/information-management/our-services/digital-continuity.htm

2.7 Post-privatisation

Records created after the date of privatisation are not public records.

3 Further reading

3.1 Public Record Bodies

- [More information on the Public Records Act, Public Record Bodies and selection processes](#)
- Public Bodies Reforms – checklist for departments: available from the Cabinet Office.
- [Machinery of Government changes](#) - guidance on transfer of records, information and knowledge

3.2 Conducting an information survey

- [Identify Information Assets and Business Requirements](#)
- [Mapping the Technical Dependencies of Information Assets](#)
- Conducting a sensitivity review:
www.justice.gov.uk/guidance/foi-exemptions-guidance.htm
www.ico.gov.uk/tools_and_resources/document_library/freedom_of_information.aspx

3.3 Copyright

- [Copyright and related rights](#)

- [Using materials from The National Archives.](#)
- [Copyright in Works Commissioned by the Crown](#)
- [The Re-use of Public Sector Information Regulations 2005](#)

3.4 Transferring digital records

- [A wide range of digital continuity guidance](#)
- [Migrating Information between EDRMS](#)
- [Digital Continuity for Change Managers](#)
- [Data handling review – transferring datasets](#)
- Web archiving and managing website content, web guidelines TG105 and TG125:
coi.gov.uk/guidance.php?page=239
coi.gov.uk/guidance.php?page=265
- [Exporting and Transferring Electronic Data](#)
- [Interpretation of the metadata standard – the record management application profile of the e-GMS](#)

If you need any further advice or assistance, please contact the Information Management team at The National Archives:

information.management@nationalarchives.gov.uk