

Procedures for closure on transfer

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Sensitivity review

Departments should consider sensitivity review as an integral part of the transfer process, along 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 department 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 (FOI) exemptions apply
- consider whether any exempt information should be released in the public interest regardless
- 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.

The process includes the following steps:

- 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

When dealing with environmental information, the application should cite the appropriate exception in the Environmental Information Regulations. If section 44(1)(a) of the Freedom of Information Act (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 available online in both [Word](#) and [Excel](#) format and contains guidance notes and examples on completing the form. The closure application must be submitted to The National Archives for review and advice early in the process, as closure must be approved before records are transferred. 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.

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 the information may be withheld and asking the department to reconsider the case

Where records are being transferred to The National Archives or a place of deposit ahead of the statutory deadline, and the intention is that they remain closed until they become historical records, or they are not public records, a similar application should be submitted prior to transfer explaining which exemption(s) apply and why. However, there is no formal review of these by the Advisory Council as it is not involved in the process. Agreement of one of the Directors at The National Archives is needed.

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 reviewed by the Advisory Council and closure has been agreed).

In other cases, if the department concerned wishes 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 should 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 bodies involved in the sensitivity review process for transferred records should also be consulted.

Closed descriptions

It is recognised that on rare occasions 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). 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). The records will be held in secure conditions until the record(s) become open, at which point the full description will be added to the catalogue. It is preferable in the interim 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.

Statute bars

The release of certain 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 e.g. 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 statute bars were no longer required or whether their terms should be varied. Section 75 of the FOIA 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 (SI). 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 (PRA). Under the PRA arrangements must still be made for the selection of those records which should 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. It is the responsibility of those retaining such records to initiate this contact with the support of The National Archives.