

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

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Introduction

Public Records are records that fall within the scope of the [Public Records Act 1958](#) (PRA) as set out in Schedule 1 to the PRA. 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 exclude 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 PRA 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 done so at the time of writing.

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 records 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.

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 PRA 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. There is information on the [Public Records Act and public records system](#) and how records are transferred to The National Archives in the [Code of practice on the management of records under section 46 of the Freedom of Information Act](#).

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 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, and through him other ministers as appropriate, on all matters relating to public 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.

The Council also 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.

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.

Records outside The National Archives

Places of Deposit

Section 4(1) of the [Public Records Act 1958 \(PRA\)](#) 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 deals with the various local courts' records kept in local areas, as well as administrative arrangements for the 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:

1. The most numerous category is the local authority archives services, throughout England and Wales, holding public records of strong local interest (for example, court and hospital records).
2. 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.
3. The National Sound Archive, part of the British Library, holds government material in the form of sound recordings. The PRA s5(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 the standards found in The National Archives wherever possible. 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 will be contacted regularly to justify continued requisition. If open records, which have been temporarily returned to the department, are asked for by a reader at The National Archives or a place of deposit they should be sent back to the corresponding location 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, 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 the same in principle but records must be ordered in advance before viewing.