



# **Complying with the Records Management Code: Evaluation Workbook and Methodology**

**Module 7: Access regimes for managing FOI  
requests**

## Module 7: Access regimes for managing FOI requests

### General

- 9.1 This workbook has separated the issue of Access in terms of the regime required for the management of FOI related enquiries and the attendant processes required to both identify the pertinent records and also to determine whether it is appropriate to disclose the relevant information. In the Code this is part of the Records creation and record keeping area but as it a substantial activity in its own right it is felt that users of this workbook will find it more convenient to review it separately.
- 9.2 This module therefore deals with the need to establish an appropriate access regime to manage requests for information under the Freedom of Information Act 2000 effectively and to document the reasons why information cannot be disclosed and which exemptions have been invoked as part of that decision making process. In short public authorities must have in place clearly defined arrangements for documenting exemption and disclosure decisions.
- 9.3 The relevant workbook questions which should be used to assess whether an organisation's regime for providing access to the information contained within its records complies with the Records Management Code and supports best practice commence on page 6.

### Context

- 9.4 The Records Management Code states that:

*Each operational/business unit of an authority should have in place an adequate system for documenting its activities. This system should take into account the legislative and regulatory environments in which the authority works.*

- 9.5 The Code then goes on to say that:

*Records of a business activity should be complete and accurate enough to allow employees and their successors to undertake appropriate actions in the context of their responsibilities, to*

- *facilitate an audit or examination of the business by anyone so authorised,*
- *protect the legal and other rights of the authority, its clients and any other person affected by its actions, and*
- *provide authenticity of the records so that the evidence derived from them is shown to be credible and authoritative.*

*Records created by the authority should be arranged in a record keeping system that will enable the authority to obtain the maximum benefit from the quick and easy retrieval of information.*

- 9.6 In order to ensure that access decisions are consistent and can be explained and referred to, public authorities should establish systems for recording when information has been disclosed – whether through the Publication Scheme or in response to a request - and, if disclosure has been refused, the reasons for non-disclosure.
- 9.7 If a request is received for information that is known to be contained within a record due for imminent destruction as part of agreed disposal procedure or schedule, there is no requirement to release the information. However, the Information Commissioner recommends the following as an example of best practice:
- Delay destruction until disclosure has taken place or complaint and appeal processes have been exhausted
  - Under the duty to offer advice and assistance, identify whether another authority holds the information, and inform the applicant accordingly.
  - Offer to provide similar or related information if this is appropriate.
- 9.8 The Act sets out strict timetables for compliance with a request, ensures that the costs of retrieving information are reasonable and asserts that all recorded information held, wherever it is located within the public authority, is potentially disclosable. If poor records management results in any of these requirements not being met, it will constitute a breach of the Act and the Information Commissioner will be able to consider using his enforcement powers.
- 9.9 One of the basic features of the FOI Act is that the right of access is to information not records or documents. Where a complete document cannot be made available for access, authorities should consider whether parts of records might be released if the sensitive information were blanked out or redacted.
- 9.10 Redaction can be defined as the separation of disclosable from non-disclosable information by blocking out individual words, sentences or paragraphs, or the removal of whole pages, prior to the release of the document. Redaction should be performed or overseen by staff that are knowledgeable about the records and can determine what material is exempt. Redaction can be carried out as part of the records review process before the records of permanent value are transferred to an archives service, (e.g. an approved place of deposit under section 4(1) of the Public Records Act 1958) so that a redacted version replaces the complete record for public access. The complete record should be

transferred to the archive<sup>1</sup>, so that in future as the applicable exemptions fall away, it can replace the redacted version for purposes of public access. Details of redactions must be recorded to ensure that records managers are fully informed as to the nature and accessibility of the information in question and to provide a record of what was actually released in response to the request for information.

## Relevant guidance

9.11 Each sector may have its own sector specific rules, regulations and guidance and readers of this workbook should reference such guidance when establishing a record keeping or management system. Additional guidance on this subject has been provided by The National Archives (TNA) and is available on the TNA's web-site. The following publications should be used:

9.12 The Information Commissioner has published a series of guides called the Awareness Guidance series to assist public authorities in meeting their legal obligations under the Freedom of Information Act 2000 and, to provide advice to, staff who may not have access to specialist advice in thinking about some its challenges. They aim to introduce some of the key concepts in the Act and to suggest the approaches that may be taken in preparing for implementation. *Awareness Guidance No 8* takes the form of FAQs on a range of records management questions and is relevant here.

### *Awareness Guidance No 8: Records Management FAQs*

The Awareness Guidance can be accessed on the Information Commissioner web-site at the following location

<http://www.informationcommissioner.gov.uk/eventual.aspx?id=77>

9.13 The Department for Constitutional Affairs has published guidance on exemptions and how and when to apply them. This can be seen at

<http://www.foi.gov.uk/guidance/index.htm>

It has also produced generic requirements for a tracking system, which can be seen at:

<http://www.foi.gov.uk/implement.htm#part5>

9.14 Public records held by other archives services, as places of deposit for public records, are held on behalf of the Lord Chancellor and are subject to FOI even if the place of deposit is not itself an FOI authority. The National Archives has developed guidance on the transfer of public

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<sup>1</sup> In cases where the sensitivity of the information is such that it cannot be transferred to the archive the records must be retained securely by the transferring authority. In such cases the retained information should be reviewed at least once every 10 years to ascertain if the reason for exempting the record from public access remains valid.

records to places of deposit, and on how to handle requests for information about those records. The guidance is intended to support public records bodies and places of deposit with regard to the two Codes of Practice as they relate to deposited public records.

*Freedom of Information Act 2000 Procedures and Guidance Relating To Public Records Transferred to and held By Places Of Deposit*

This publication can be accessed at the following location

[http://www.nationalarchives.gov.uk/policy/foi/pdf/foi\\_guide.pdf](http://www.nationalarchives.gov.uk/policy/foi/pdf/foi_guide.pdf)

- 9.15 The National Archives has also produced a toolkit to provide guidance on redaction.

*Redaction Toolkit Guidelines for the Editing of Exempt Information from Documents Prior to Release*

This publication is at:

<http://www.nationalarchives.gov.uk/recordsmanagement/advice/pdf/redactiontoolkit.pdf>

- 9.16 The guidance covers a number of redaction methods for presentation of information in hard copy. It examines several processes, but does not recommend any overall, as it is for each authority to decide which best applies to its organisational demands and the resources it has available. It also discusses some of the issues involved in the redaction of electronic data.

- 9.17 The Department of Health has provided sector specific guidance in the form of a Health Service circular which provides relevant advice on this topic, which should be consulted by NHS Trusts and health authorities. This is

*Health Service Circular HSC 1999/053, For the Record*

This publication can be accessed at the following location

<http://www.dh.gov.uk/assetRoot/04/01/20/36/04012036.pdf>

## **Evaluation questionnaire**

- 9.18 To assess whether this element is adequately addressed see the questions in the table on the following pages, numbered 1 to 20 in this workbook. Guidance on how to analyse the responses to these questions is provided in the chapter entitled *Risk evaluation and development of mitigation strategies*.

1. Does the record keeping or record management system record the access constraints, which apply to each record set? Yes  No  N/A

*(Note: - this is to capture any restrictions on the use of the records (e.g. under data protection), access constraints on user groups, relevant FOI exemptions, etc)*

Reference

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2. Has the organisation implemented procedures for handling requests for information from the public? Yes  No  N/A

Reference

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3. Have all relevant staff been trained in responding to FOI requests? Yes  No  N/A

*(Note all staff should have an understanding of the organisation's obligation, and the role they personally must discharge in response to that obligation, arising from the FOI Act when processing requests for information under the Freedom of Information Act 2000)*

Reference

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4. Have the people charged with responding to requests for information been trained in applying exemptions? Yes  No  N/A

*(Note: In some cases it may not be appropriate to disclose some or all of the information, which is pertinent to an FOI request. In such cases the relevant personnel need to understand which exemptions under the FOI Act 2000 may be relevant when considering whether it would be appropriate to withhold information on the basis of an existing exemption. Failure to apply the exemptions properly can either result in information being disclosed inappropriately or being withheld inappropriately. In either case the organisation could be embarrassed or disadvantaged. The issue here is the nature and quality of the training given to the staff charged with this responsibility.)*

Reference

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5. Are FOI requests categorised, logged and registered within an auditable system? Yes  No  N/A

Reference

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6. Has the organisation published guidance on how to make an FOI request? Yes  No  N/A

Reference

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7. Is there a mechanism for applicants to lodge complaints or provide suggestions for improvements to the service? Yes  No  N/A

Reference

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8. Does the request tracking system record the progress of enquiries to ensure statutory deadlines are met? Yes  No  N/A

(Note: where appeals are lodged it may be necessary to demonstrate that the relevant enquiry was processed in accordance with the statutory provisions)

Reference

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9. Does the request tracking system record where fees are charged? Yes  No  N/A

Reference

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10. Does the request tracking system record which information was disclosed? Yes  No  N/A

Reference

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11. Does the request tracking system record, which information was withheld and which FOI exemption(s) applied? Yes  No  N/A

*(Note: both to ensure and demonstrate consistency in managing enquiries about the same type of information it is highly desirable this information is captured. Where refusal notices are appealed at the Information Tribunal it may be necessary to demonstrate that the organisation has applied exemptions consistently.)*

Reference

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12. Does the request tracking system record where a refusal notice has been issued on the grounds that the request has been classed as vexatious under section 14 of the FOI Act? Yes  No  N/A

Reference

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13. Where some information has been provided and some withheld does the request tracking system record if a redaction(s) was supplied? Yes  No  N/A

Reference

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14. Where information has been redacted, is a copy of the redacted version held, either within the system or elsewhere? Yes  No  N/A

Reference

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15. Does the request tracking system provide means to identify generic enquiries so as to ensure consistent responses? Yes  No  N/A

*(Note one advantage of identifying generic enquiries is it may be possible to standardise responses to expedite the process but the information gained may also help an organisation determine to supplement their publication scheme with additional information to reduce the burden of managing FOI enquiries by referring such enquirers to the organisation's enhanced publication scheme.)*

Reference

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16. *Is there a mechanism to trigger additions of requested information to the authority's publication scheme?* Yes  No  N/A

Reference

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17. *Where an organisation has implemented an electronic record management system (ERMS) is this used to record disclosures under the FOI Act and provide links to the disclosed records?* Yes  No  N/A

Reference

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18. *Where the organisation transfers records to a permanent archive is there a procedure to transfer appropriate finding aids to ensure identification and retrieval in response to subsequent requests for information?* Yes  No  N/A

Reference

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19. *Where the organisation transfers records to an archives service is there a procedure for it to prepare a schedule specifying information which it considers ought not to be made immediately available to the public, citing the relevant exemptions, explaining why they apply and for how long?* Yes  No  N/A

Reference

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20. *Where the organisation transfers records to an archives service, has it provided a contact point for consultation on the access decision?* Yes  No  N/A

Reference

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