

Memorandum of Understanding between the Keeper of Public Records and the Information Commissioner

Introduction

The purpose of this memorandum is to clarify the relationship between the Information Commissioner ('the Commissioner') and the Keeper of Public Records ('the Keeper') under the Freedom of Information Act 2000 ('the Act'). It also seeks to establish a working framework for the development of this relationship in practice.

Legal Framework

1. As required by the Act, the Lord Chancellor has issued two codes of practice. The section 45 code relates to the discharge of functions by public authorities under Part 1 of the Act, and the section 46 code relates to records management in relevant authorities (public authorities and other bodies whose administrative and departmental records are "public records" as defined by the Public Records Act 1958).
2. Section 47(1) requires the Commissioner to promote the observance of the two codes of practice, and may, with the consent of an authority, carry out assessments of whether good practice is being followed (section 47(3)).
3. Section 47(5) requires the Commissioner to consult the Keeper about the promotion of the records management code in relation to public records.
4. Under section 51(1)(b)(ii) the Commissioner can serve an Information Notice on a public authority requiring it to provide information relating to conformity with either code of practice.
5. Section 48 enables the Commissioner to give to a public authority a "practice recommendation" specifying the steps which he considers should be taken in order to conform with good practice as recommended by either code of practice. A practice recommendation must be in writing and must refer to specific provisions of the code. Where the practice recommendation relates to conformity with the records management code and the records in question are public records, section 48(3) requires the Commissioner to consult the Keeper.
6. Under section 3(2) of the Public Records Act 1958 all bodies subject to that Act are required to perform their duties in relation to the selection and safeguarding of records under the guidance, co-ordination and supervision of the Keeper of Public Records.

Arrangements agreed between the Keeper and the Commissioner for the above statutory provisions to be observed

1. Liaison Meetings

- The Commissioner and the Keeper shall meet in March and September each year.
- This meeting will be an opportunity to discuss items of mutual interest and concern in relation to records management practice within public authorities.
- In particular, the Keeper will be able to share her assessment of the current levels of conformity with the records management code. The Commissioner may refer to this assessment in his annual report to Parliament.
- The meeting will also be an opportunity for the Commissioner and the Keeper to agree a programme of audits that the Keeper will undertake on behalf of the Commissioner to assess conformity with the records management code. Reports on the progress of on-going audits may also be provided at the meeting.
- In due course the Commissioner and the Keeper may decide to hold the meeting on an annual basis or at some other appropriate interval.
- The Deputy Keeper of the Records of Northern Ireland may be invited to participate in the meetings between the Commissioner and the Keeper.
- Nothing in this Memorandum prevents more frequent meetings from taking place between the Commissioner and the Keeper or their respective members of staff.

2. Audit

- The principal method for monitoring conformity will be self-assessment by public authorities.
- The Commissioner may request the Keeper to carry out assessments of conformity with the Records Management Code on his behalf. The detailed arrangements for such assessments may be formalised in a service level agreement.
- Selected authorities may be actively audited by the Keeper, in accordance with guidelines set out by the Commissioner for such audits.

3. Practice Recommendations

- Where, either via her role under the Public Records Act 1958 or in acting on behalf of the Commissioner under the Act, the Keeper considers that a practice recommendation should be given to a public authority she will raise this with the Commissioner.
- There may be circumstances, for example as a result of a complaint or following the response to an Information Notice, where the Commissioner considers that a practice recommendation should be given to a public authority. In such cases the Commissioner will consult the Keeper who will be able to advise whether there is a sound basis for the Commissioner's view and whether she considers that a practice recommendation is appropriate.
- The final decision as to whether or not a Practice Recommendation is issued will be taken by the Commissioner.

4. Information Notices

- There may be cases where the Commissioner considers that an Information Notice is needed so that he can assess whether a public authority is conforming with the records management code. The Commissioner will contact the Keeper who will advise whether she considers that an Information Notice is appropriate. For example, she may have relevant background information on the public authority in question.
- If the Commissioner decides that an Information Notice is to be served the Keeper may assist in the framing of the Notice.
- If the Keeper advises the Commissioner of a possible failure by a public authority to conform with the records management code and the Commissioner considers that further information is needed, the Keeper will assist in the framing of an Information Notice.

5. Co-ordinated Promotion and Monitoring

- In pursuance of the requirements of section 3(2) of the Public Records Act 1958, the Keeper issues standards, guidance and other tools in support of records management in government. In recognition of this, the Commissioner and the Keeper agree to work together in promoting and monitoring good records management in the public record sector.
- This co-operation will extend to the promotion and monitoring of conformity with the records management code, and the Commissioner and the Keeper will endeavour to carry out such activities in a co-ordinated manner. For example, this may involve the Commissioner alerting the Keeper to the need for an audit, or the Keeper alerting the Commissioner to the need for an Information Notice.
- In general, where the Keeper becomes aware of poor records management by a public authority which may indicate a significant failure to conform with the records management code she shall inform the Commissioner of this, and vice-versa. The Commissioner and the Keeper will agree on the appropriate course of action as circumstances dictate.

Signed by the Information Commissioner and the Keeper of Public Records on 24 May 2004