

# Advisory Council on National Records and Archives

## 17th Annual Report 2019-20

To the Right Honourable Oliver Dowden CBE MP Secretary of State for Digital, Culture, Media and Sport (**'DCMS'**).

### Part One - Introduction

#### Background

The Advisory Council on National Records and Archives (the **'Council'**) is an independent advisory body, created under the Public Records Act 1958 and exercising statutory functions under that Act. It advises the Secretary of State for Digital, Culture, Media and Sport (the **'Secretary of State'**) on issues relating to access to public records. It also carries out duties under the Freedom of Information Act 2000.

Through its sub-committee, the Forum on Historical Manuscripts and Academic Research (the **'Forum'**), the Council also advises the Chief Executive of The National Archives and Keeper of Public Records on matters relating to independent (non-governmental) archives outside the public records system.

The Council's and the Forum's respective remits are described in more detail in **Appendix A** and membership details are included in **Appendix B**.

## **Part Two – The Advisory Council’s work in 2019-20**

### Membership

Following a successful recruitment campaign, seven new members were appointed to the Council in October 2019:

Mr Stephen Hawker

Mr Martin Howard

Professor Phillip Johnson

Professor Leon Litvack

Ms Helene Pantelli

Mr David Rossington

Mr Martin Uden

This brings the total membership to 17.

### Meetings

The Council held four meetings in May, July and November 2019 and in February 2020, together with an additional training meeting in September, at which a number of helpful and informative presentations were given, including from the Foreign and Commonwealth Office on the challenges of dealing with digital sensitivity selection, review and transfer, and the Information Commissioner’s Office on its work.

Council meetings were attended by members, as well as by Jeff James, The National Archives’ Chief Executive and Keeper of Public Records. Other representatives from The National Archives who possess particular expertise relating to the issues considered by the Council also participated, as necessary. The Ministry of Defence and the Metropolitan Police Service both attended meetings during the year.

## Closure of records under the Freedom of Information Act

The core of the work of the Council is to:

- 1) act on behalf of the Secretary of State, in advising public record-transferring bodies on the consideration of the public interest in relation to engaged qualified exemptions as defined in the FOIA, when a record is at the point of transfer to The National Archives. The Council may respond to applications by such bodies for records (in whole or in part as appropriate) to be transferred closed by:
  - a) accepting that the information may be withheld for longer than 20 years and earmarking the records for release or re-review at the date identified by the authority;
  - b) accepting that the information may be withheld for longer than 20 years but asking the authority to reconsider the proposed date for release or re-review;
  - c) questioning the basis on which it is considered that the information may be withheld for longer than 20 years, asking the authority to reconsider the case, and, exceptionally, to request sight of the record;
  - d) advising departmental ministers against the application of an FOI exemption in a particular case when, following thorough examination of the department's rationale, it judges the balance of public interest to be against closure.
- 2) providing advice to the Secretary of State when a public record-transferring body has made an application to retain records that are 20 years old, which would otherwise be transferred to The National Archives. The Secretary of State signals approval for retention for the specified period by signing a Retention Instrument.

Given the very large volume of applications placed before it, the Council works on the basis of summaries prepared by departments and scrutinised by The

National Archives. The Council will ask for more details and question apparent weaknesses in the arguments for closure until it is satisfied; or until the department withdraws or modifies the request. Occasionally, the Council may request that one of its members sees the full record. Further information on how the Council scrutinises and challenges the applications it receives is available on the Council's website: [nationalarchives.gov.uk/about/our-role/advisory-council](https://nationalarchives.gov.uk/about/our-role/advisory-council) .

In 2019-20, the Council considered **5,778** applications for closure from departments (a similar figure to 2018-19). The Council queried **16%** of applications for the transfer of records closed under qualified (i.e. not absolute) exemptions. This figure compares with 13.5% in 2018-19. In general, departments are providing fuller explanations to support their applications than in previous years which the Council has found helpful, but as the figures show, there are still a significant proportion in that the Council has required further clarification, and in the case of **23** records, Departments withdrew their applications in response to the Council's challenge.

In 2019-20, the Council considered **878** individual records which departments had applied to retain (a reduction from 970 in 2018-19). The Council queried 11.5% of these (5.5% in 2018-19), and Departments withdrew five applications in response to the Council's challenge. The Secretary of State has accepted the Council's advice on every application considered this year.

Detailed metrics are at Appendix C.

In a new development, sub-groups of the Council met in April and October at The National Archives to examine a small sample of the records which the Council had previously agreed should be closed under the usual application process. The purpose of this examination was to provide assurance to the Council that the summaries of the records on which the Council had reached its views on the applications accurately described the records. The process was informative for Council members, and provided an opportunity to offer feedback to departments.

## **The Advisory Council's procedures and processes**

The Council, through its working group, has participated fully in wider government work to revise the Code of Practice under Section 46 of FOIA, in particular to ensure that the Code clearly reflects the Council's statutory responsibilities. The review also seeks to ensure that it fits the modern digital working environment and provides an accessible framework setting out how relevant authorities should manage information to support appropriate public access now and in the future. The draft Code should be available for public consultation later this year.

## **Engagement with departments**

The Ministry of Defence (MoD) attended the July meeting to provide an update on an outstanding issue regarding the review of a large number of Atomic Weapons Establishment (AWE) and Nuclear decommissioning Authority (NDA) records held at The National Archives. The MoD had requested the return of these records from public access for the purpose of review. The Council had requested more detailed information on the reason for removal, review process and timescales. A number of updates were provided during the year and staff from the Government Audience Department at The National Archives worked with the MoD to resolve issues. Council also engaged with MoD reviewers during the process. Most of the issues have now been resolved, however the Council invited the department to attend the May meeting to provide assurance around the timescales and further clarification on the process.

Building on outreach work done by The National Archives, the Council is now better sighted and able to scrutinise the records management of Arms Length Bodies and other organisations which are 'Places of Deposit' (for historic records) in their own right. This enables the Council to encourage strategic approaches to record transfers and to ensure compliance with the legislation, including for retention cover for historic documents.

## Review backlogs

This year, the Council considered a larger than usual number of requests from departments relating to the management of review backlogs or where retention is sought for administrative purposes, in relation to documents which are not selected for permanent preservation. A smaller number of cases relate to records which have been selected for permanent preservation.

The Council received such retention applications from the Department for Business, Energy and Industrial Strategy; the Department for Environment, Food & Rural Affairs; the Department for International Development; the Home Office; the Ministry of Defence (Guards and Service Personnel); the Ministry of Justice; the Northern Ireland Office; the Foreign & Commonwealth Office; HM Treasury; the Department for Transport; the Department for Work & Pensions; the Department of Health & Social Care; the Ministry for Housing, Communities and Local Government; Cabinet Office; Office for Standards in Education, Children's Services and Skills; Royal Botanic Gardens Kew; Tate; The Royal Parks; UK Debt Management Office; the Welsh Government; Royal Mail Group and Post Office Ltd; the Environment Agency; the Food Standards Agency; Health & Safety Executive; HM Land Registry; Historic Royal Palaces; Metropolitan Police Service; Natural England; Office for National Statistics; Advisory, Conciliation and Arbitration Service; the Insolvency Service; The Crown Prosecution Service; Medicines and Healthcare Products Regulatory Agency; Natural Resources Wales; Centre for Environment, Fisheries and Aquaculture Science; Competition and Markets Authority and Metrological Office.

Some departments made more than one such application during the period. Generally, a period of one or two years was sought. In a small number of cases, three to six years was requested.

The outcome of these applications was as follows:

- For **34** of these requests, the Council was content to recommend to the Secretary of State that permission be given to the relevant organisation to retain its legacy records for the period requested.

- In **five** cases, the recommendation was that the department be granted a lesser retention period than requested.
- In **two** cases, the organisations were asked to attend the relevant Council meeting in person to provide a more detailed justification and timetable before a recommendation to the Secretary of State could be made.
- In the remaining cases, the Council was content to recommend to the Secretary of State that permission be given to the relevant organisation to retain its legacy records for the period requested, but asked for written updates to be provided, to ensure that departmental records management projects remained on track.

The Council also considered update papers from the Department for Environment, Food & Rural Affairs; Animal & Plant Health Agency; The National Archives; the Foreign & Commonwealth Office; Ministry of Justice; Department for Education; Home Office; Ministry of Defence; Charity Commission; HM Revenue and Customs; and the Competition and Markets Authority.

### **FOI panels**

The Council acts on behalf of the Secretary of State, to consider the balance of the public interest in the release or non-disclosure of information contained in transferred historical records that engage qualified exemptions (only), when an application has been made to The National Archives under section 66 of FOIA for the disclosure of information held by it. The Council exercises this responsibility through the convening of panels of three members to consider up to 20 requests at a time.

### Metrics

During the financial year 2019-20, 26 panels were convened, with **514** cases being considered. Panels substantively challenged **62** of these, or **12%** of the total.

Having been provided with more detail, in most cases the panels were able to accept departments' arguments for continuing to apply public interest based exemptions. However, **six** applications (**1%**) were withdrawn by departments following panel scrutiny, with two records being opened in full:

Panel 11 – Case 20: Removal of Section 38 exemption (information remained closed under S40)

Panel 12 – Case 15: Removal of Section 38 exemption (information remained closed under S40)

Panel 16 – Case 3: Removal of Section 27 as material in the public domain. Exemption withdrawn; information released

Panel 19B – Case 2: Panel challenged Section 27. Application was withdrawn pending reconsideration of the sensitivities of the file in consultation with FCO

Panel 19B – Case 7: Removal of Section 27. File remains closed under absolute exemption

Panel 20 – Case 18: Removal of Section 27(1). Exemption withdrawn; information released

- Overall, sections 27 (international relations) and 38 of FOIA (health and safety) were both the most challenged exemptions, and the most frequently applied for.
- Council noted the relevance and overlap between qualified and absolute exemptions applied to the same record (i.e. Section 27(2) and Section 41).
- There were a number of questions around determining prejudice and the threshold for specific cases – i.e. the degree of harm to individuals for Section 38 cases and mental endangerment.



- Council regularly reiterated the importance of quality assurance to applications for clarity to ensure cases are progressed without unnecessary challenge.

### Process

The FOI panel process is explained in more detail **in Appendix D**. As in previous years, the majority of FOI requests for closed records sought access to criminal case files, usually relating to historic murder cases. In these instances, the Council is typically called upon to balance the public interest in release against the potential distress which might be caused to victims or their relatives, or (in the case of unsolved crimes) to the risk to the successful prosecution of perpetrators in the future.

### **Other issues**

As part of the Council's broader advisory remit with regard to The National Archives, the Council has received a regular quarterly report from the Chief Executive and Keeper with regard to issues facing The National Archives and about its activities. These reports have been reviewed by the Council at its quarterly meetings. During the year the Council also reviewed and discussed proposals for a trial of a revised document ordering process intended to be introduced at the Kew site.

## **Part Three – The Forum on Historical Manuscripts and Academic Research**

### Background

The Forum, in its capacity as a sub-committee of the Council, provides a means through which the Chief Executive of The National Archives, in his capacity as Historical Manuscripts Commissioner, can seek advice on historical manuscripts in independent (i.e. non-governmental) archives. It also facilitates discussion of academic research issues and programmes managed by The National Archives.

## Membership

The Forum is chaired by the Master of the Rolls. Ms Hillary Bauer, OBE currently acts as Deputy Chair.

Three other members of the Council, all of whom have expertise in academic research and/or knowledge and experience of private archives, and two independent members currently serve as members of the Forum. A further recruitment process for an additional independent member was conducted in April 2019, but was unsuccessful.

## Meetings

Meetings of the Forum are attended by members and by the Chief Executive and other staff from The National Archives.

The Forum met three times during the period covered by this report, in September and December 2019 and in March 2020. It expects to hold at least three further meetings during 2019-20, at which it will focus on its agreed strategic priorities. These priorities have been reviewed during the year and the Forum has agreed four clear priorities for the next 12 months:

- Cross-cutting issues with museums and libraries
- Digital challenges
- Threats to the archive sector
- Raising awareness of the Forum and its work.

More detailed objectives within these priorities have been identified and a Skills Audit is being undertaken to highlight the specific skills and experience of members to help inform the overall strategy and objectives discussions.

During the period, the Forum continued to:

- discuss and advise on the work of the Research and Academic Engagement and the Archive Sector Development teams at The National Archives;
- engage with the digital teams at The National Archives to learn more about the challenges of digital material and discuss how these challenges might be addressed, especially in relation to independent archives and the wider sector;
- advise and assist The National Archives regarding the events surrounding the 150th anniversary of the Historical Manuscripts Commission, specifically an evening event at the House of Lords for key stakeholders, and a symposium at The National Archives.

#### Other business

In addition, the Forum has considered **seven** cases dealing with the acceptance by the government of private archives in lieu of the payment of a tax liability under the provisions of the Inheritance Tax Act 1984.

#### **Part Four – Looking Ahead**

Looking ahead to 2020-21, the biggest challenge will be the impact of the Covid-19 pandemic on the end-to-end process of selecting, reviewing and transferring records to The National Archives. At the time of writing there is much uncertainty about when normal working practices will be able to be resumed, and how new working practices can be adopted to mitigate current constraints. The Council stands ready to play its part through being flexible and innovative in enabling this important activity to continue as far as possible.

**The Right Honourable Sir Terence Etherton**  
**The Master of the Rolls**  
**June 2020**

## **Annex A – The Remit of the Council and the Forum**

### **Part One – The Council**

#### Background

The Advisory Council on National Records and Archives was established by the Public Records Act 1958 (**'PRA'**) and is a non-departmental public body. It is chaired by the Master of the Rolls, The Right Honourable Sir Terence Etherton, who was appointed with effect from 3 October 2016.

#### The role of the Council

The Council is to consider and advise on matters including:

- applications from departments for the retention within those departments of public records beyond the age of 20 years, when those selected for permanent preservation are normally transferred to The National Archives;
- the balance of the public interest in relation to applications from departments for the extended closure of historical public records and other 'matters relating to the application of the Freedom of Information Act 2000 (**'FOI Act'**) to information contained in public records that are historical records within the meaning of Part VI of that Act';
- the balance of the public interest in the release or non-disclosure of historical records, an application for the disclosure of which has been made under the FOIA; and
- the preservation of public records in places of deposit and facilities for public access to them.

Requests under FOIA in accordance with the third bullet point are dealt with through the FOI panel process, which is described in **Annex D** below.

In addition, the Council may be required to advise on:

- major objectives, programmes and policy changes for The National Archives;
- proposed legislation affecting The National Archives;
- the implications for records and public services of any proposed change to the status of The National Archives; and/or
- any subject brought to its attention by the Secretary of State.

As its name suggests, the Council's role is advisory. Accordingly, the Council does **not**:

- make the final decision as to:
  - when they become historical, records are transferred to The National Archives closed; nor
  - when a closed record is reviewed after transfer, it should remain closed

as these decisions lie with the department whose records they are;

- make the final decision on whether a record can be retained by a department. This decision is made by the Secretary of State for Digital, Culture, Media and Sport;
- advise on departments' retention of records under the Security and Retention Instrument 2011; nor
- review departments' decisions on the selection of their records for permanent preservation.

This falls under the remit of the Keeper of Public Records.

## **Part Two – The Forum**

The Council's responsibility relating to historical manuscripts (private archives) is discharged through the work of its sub-committee, the Forum on Historical Manuscripts and Academic Research. The Forum advises the Keeper of Public Records in his capacity as Historical Manuscripts Commissioner. The Forum considers and provides advice to the Secretary of State through the Council on matters relating to manuscripts, records and archives, other than public records, and particularly:

- the location, collection, care, custody, preservation, acquisition, sale, and use in all formats of such documents;
- the compilation and dissemination of information about them;
- any questions affecting such documents as may be referred for its consideration, including issues relating to the statutory duties of the Master of the Rolls in respect of manorial and tithe documents, and the making of recommendations to Arts Council England on the allocation of archives and manuscripts accepted for the nation in lieu of tax; and
- other issues that would formerly have come within the terms of reference of the Royal Commission on Historical Manuscripts.

In addition, on behalf of the Council, the Forum is to:

- act as a vehicle for the development of constructive and collaborative engagement between The National Archives and its academic stakeholders, sharing knowledge and developing trust and understanding; and
- provide an open, independent and authoritative advisory voice to The National Archives, to support its research and academic liaison.

## **Annex B – Membership**

### **Part One – The Council**

The Master of the Rolls chairs the Advisory Council. The Master of the Rolls was originally responsible for the safe keeping of charters, patents and records of important court judgments. Today he is President of the Court of Appeal (Civil Division) and Head of Civil Justice. The current Master of the Rolls is the **Right Honourable Sir Terence Etherton**.

The Deputy Chair is **Mr Trevor Woolley CB**.

During the period covered by this report seven new Council members were appointed.

The current members of the Council are:

**Lady Moira Andrews**, Director, Praetor Legal Ltd and ADS Group Ltd; Visiting Research Fellow, King's College London; former Government Legal Adviser.

**Ms Hillary Bauer, OBE**, adviser on culture and heritage issues; Board Member of Towner Gallery Eastbourne and of Ben Uri Museum and Gallery; Trustee of the Worshipful Company of Arts Scholars.

**Ms Liz Copper**, BBC Senior Broadcast Journalist.

**Ms Lesley Ferguson**, Head of Archives and Engagement, Historic Environment Scotland.

**Dr Helen Forde**, historian and archivist; formerly board member of the Museums and Libraries Association; Chair of the Board of Trustees of the Postal Museum; Vice President of the Society of Antiquaries.

**Dr Peter Gooderham, CMG**, former Ambassador to the UN and WTO in Geneva.

**Mr Michael Smyth CBE QC (Hon)**, Member Legal Services Board and Fundraising Regulator; former Head of Government Practice, Clifford Chance.

**Ms Jeannette Strickland**, independent archive and records consultant; formerly Head of Art, Archives and Records Management, Unilever.

**Mr John Wood**, solicitor; Advisory Committee on Business Appointments (ACOBA) Independent Member; formerly Charity Commission for England and Wales Legal Board Member and Board Consultant; formerly Herbert Smith Freehills, Partner, then Consultant.

**Mr Stephen Hawker**, independent national security consultant; independent member of the Audit Committee of Manchester Metropolitan University.

**Martin Howard CB**, retired senior security official specialising in cyber and intelligence security policy and operations. Appointed Companion of the Bath.

**Professor Phillip Johnson**, barrister; Professor of Commercial Law at Cardiff University; published numerous books and articles on law and legal political history.

**Professor Leon Litvack**, Professor of Victorian Studies at the Queen's University of Belfast; specialist on Charles Dickens; board member of the Charles Dickens Museum; board member of National Museums Northern Ireland; freelance broadcaster for the BBC.

**Ms Helene Pantelli**, solicitor specialising in commercial law; ombudsman at the Financial Ombudsman.

**David Rossington CB**, former civil servant; Vice Chair and Treasurer of Stoll; Treasurer of Earth Trust; Trustee at the Oxfordshire Community Foundation; Trustee of Arts at the Old Fire Station.



**Martin Uden**, former Ambassador in Seoul; International Partnerships Adviser at Queen Mary University of London; Trustee of a Christian mission charity; Chairman of the British Korean Society; President of the British Korean War Veterans' Society; published author.

**Trevor Woolley CB**, non-executive director, Oil and Pipelines Agency; formerly Director General, Ministry of Defence, who also acts as Deputy Chair of the Council.

The position of Secretary to the Council is currently vacant.

## **Part Two – The Forum**

The Master of the Rolls chairs the Forum.

Council members Ms Hillary Bauer, OBE (the current Deputy Chair), Ms Lesley Ferguson, Dr Helen Forde, Ms Jeannette Strickland and Professor Leon Litvack sit on the Forum, together with the following independent members:

**Ms Adele Redhead**, a lecturer at the University of Glasgow, where she leads the MSc in Information Management and Preservation. She is a qualified archivist and has extensive experience in archives and records information management in a variety of sectors. She is a member of the Scottish Catholic Heritage Commission.

**Ms Jenny Shaw**, the Collections Development Manager for the Wellcome Collection, where she is responsible for setting the collecting direction across formats, including archives. She previously worked as an archivist at the British Red Cross and BT Heritage

The Chief Executive of The National Archives is also a member of the Forum, on an ex officio basis, as the Historical Manuscripts Commissioner.

The position of Secretary to the Forum is currently vacant

## Annex C – Metrics

Key statistics relating to applications considered by the Council are set out below.

### Closure of Records

- In 2019-20, **72,899** (2018-19, 69,974) government records were accessioned at The National Archives.
- **60,707** or **83.3%** (2018-19, 61,145 or 87.4%) of these records were transferred open in full or partially closed and can be viewed at The National Archives by any member of the public who has a reader's ticket.
- **6,923**, or **9.5%** (2018-19, 4,658 or 6.7%) of these records were transferred closed, after departmental applications to do so had been scrutinised by the Council.
- **5,197**, or **7.1%** (2018-19, 4,084 or 5.9%) of these records were retained in full by the relevant department.
- The remaining **72** were transferred as 'number not used'. (NB: This tag is used where a gap is identified in The National Archives' sequential catalogue numbering system. This might occur if, for example, a duplicate record is discovered. To avoid a laborious renumbering process, the relevant record number is shown in the catalogue as 'unused'.)
- The number of closure applications submitted to the Council decreased this year to **5,778**, compared with 5,843 in 2018-19 (and 5,974 in 2017-18). Around **53%** of these applications engaged only absolute exemptions and so were not subject to a public interest test. Of these, the vast majority involved personal information about private individuals; personal information may be protected from release by data protection legislation. In considering applications to close records to the public, the Council focuses on those that invoke exemptions subject to a public interest test.

The most common exemptions claimed concern of damage to international relations and risks to the health or safety of individuals.

## **Retention**

This year, the Council considered **878** retention applications, compared with 970 in 2018-19.

## Applications considered

Overall, there was a decrease of **2%** in the number of applications compared with 2018-19, but this still represents an increase of 32% on 2014-15.

The following table sets out key metrics for 2019-2020, as compared with previous years:

		2014-15	2015-16	2016-17	2017-18	2018-19*	2019-20
Closure applications	<b>Applications considered</b>	4,250	4,435	4,290	5,974	5,843	5,778
	<b>Applications queried</b>	181	480	465** (510**)	410**	387	487
	<b>Applications where clarification was received and accepted</b>	105	340	173 (232)	122	162 (157+1+4 <u>recalculated</u> )	194
	<b>Applications that were amended by departments and accepted***</b>	67	126	247 (218)	209 ½****	208 (183+24, +1 <u>recalculated</u> )	173
	<b>Applications withdrawn by departments following challenge by the Council</b>	9	14	44 (34)	32½*** (31 ½*** +1 <u>outstanding query withdrawal</u> )	17 (13+4)	23
<b>Outstanding closure applications at March 2020*</b>					0 (1 <u>resolved</u> )	0 (37 <u>but recalculated</u> )	97

						ted as 29 entries on the proform a, all resolved)	
Retention applications	<b>Applications considered</b>	793	952	986	1,432	970	878
	<b>Applications queried</b>	28	44	108 (116)	125	52	76
	<b>Applications where clarification was received and accepted</b>	21	28	39 (41)	32	20	25
	<b>Applications that were amended by departments and accepted</b>	4	12	57½ (39)	79	25 (19+6)	18
	<b>Applications withdrawn by departments following challenge by the Council</b>	3	4	11½ (26)	14	6 (4+2)	5
<b>Outstanding retention applications at March 2020*</b>						1 (9 - 8 resolved)	28

[29]

\*A number of queried cases remained unresolved at the end of the period covered by this report and will be carried forward. At the same time, the unresolved queries from the previous period have been included in this report.

\*\*One application for 2016-17 was never resolved, see the section in this report called Access to Public Records. There were 46 closure applications queried in 2017-18 that were not resolved through the query process but resubmitted on a new schedule.

\*\*\* These include cases where in response to Council challenge, departments withdrew applications for the use of particular exemptions, but the record was transferred closed under another (agreed) exemption.

\*\*\*\*The figure of ½ referred to reflects the fact that the relevant application covered two records and the application in respect of one of these was withdrawn.

[30]

[Note: Responses to the resolves outstanding in 2017-18 and 2018-19 are in brackets and underlined. The first number in the bracket refers to that shown last year.

2016-17 and 2018-19 figures have been recalculated as some discrepancies had occurred.]

## **Annex D – the FOI panel process**

The Council's FOI panel process

The Council is responsible for advising the Secretary of State on the application of the Freedom of Information Act 2000 ('**FOIA**') to historical public records.

Records retained by departments and those closed at transfer to The National Archives remain subject to the FOIA and individuals can make a request under FOIA (an '**FOI request**') to have access to them.

When The National Archives receives a FOI request for access to closed information held by it, it follows the procedure set out in Part VI of FOIA. Under these provisions, before a request can be refused on the grounds of a qualified exemption, the Secretary of State must be consulted. The Council will assess the public interest test, which is necessary before such an exemption can be applied. This test is applied to determine, whether, in all the circumstances of the case, the public interest in disclosure is outweighed by the public interest in refusing access to the information in the record.

For this purpose, panels of three Council members are convened to consider the public interest in the release or non-disclosure of the requested information. (The Council has no advisory role when a request is to be refused citing only absolute exemptions.)

In most cases, the FOI request concerns information closed at transfer on the grounds that it was information:

- that, if released, would endanger the safety or physical or mental health of an individual;
- that, if released, would damage international relations; or
- relating to law enforcement.

Cases are carefully scrutinised and debated by panels on the basis of a fresh assessment by the department of the arguments for and against disclosure, taking account of any change in circumstances since the access status of the record was last considered.

If they consider it necessary, panel members will request further detail or clarification from the relevant department or The National Archives. Even where they are in agreement that the public interest in closure outweighs the public interest in applying the exemption, members of the panel may also raise concerns about departmental practices and draw attention to inconsistencies between departments in their handling of FOI requests.