

Advisory Council on National Records and Archives

Advisory Council FAQs

1. What is the Advisory Council on National Records and Archives?

The Advisory Council is an independent, advisory non-departmental public body that provides advice to the Secretary of State for Digital, Culture, Media and Sport and to other Government Departments on issues relating to access to public records. It was established by the Public Records Act in 1958.

2. What does the Advisory Council do?

The Council has four main roles:

- It advises the Secretary of State on issues relating to historical public records that have been selected by government departments for permanent preservation and transfer to The National Archives when the records become 20 years old, including public access to these documents.
- It advises the Secretary of State on requests from government departments to retain historical documents for administrative or security reasons, under the Public Records Act.
- It advises on the public interest when departments want to keep historical public records closed under Freedom of Information Act exemptions. It challenges departments to provide evidence to justify the continuation of such closures.
- Through its sub-committee, the Forum on Historical Manuscripts and Academic Research, it advises the Chief Executive and Keeper of The National Archives in his role as Historical Manuscripts Commissioner under a Royal Warrant of 1869 on issues relating to independent archives. It also advises on strategies and policies which provide leadership for the archive sector.

The Advisory Council also supports government departments and The National Archives by providing independent advice and scrutiny on issues relating to records managements and archives. It meets four times a year, but there is frequent activity between meetings, with groups of members forming special panels to consider requests under the Freedom of Information Act for the release of documents held by The National Archives or kept within government departments.

3. Who is on the Advisory Council?

The Council typically has up to 18 members drawn from the public, private and third sectors, including historians and academics, archivists and information management specialists, and former civil and public servants, journalists and diplomats. Members are appointed because they have knowledge and expertise relevant to the Council's work, which will help it evaluate departmental responses about the sensitivity of particular records. Historians, for instance, may be able to use their knowledge to place a record in its historical context and to confirm what is already in the public domain. A former civil servant, with first-hand experience of working in government, is well-placed to identify when a department is being unnecessarily cautious in seeking to keep a document closed. Members have to declare any potential conflict of interests in a published register, and do not take part in the consideration of any applications where they have a direct interest.

4. How do you become a member of the Council?

Anyone can apply. Appointments for three-year terms are publicly advertised. The process is regulated by the Commissioner for Public Appointments whose Code of Practice sets out three principles which govern appointments – merit, fairness and openness. Final appointments are made by the Secretary of State for Digital, Culture, Media and Sport.

5. Who chairs the Advisory Council?

The Advisory Council is chaired by the Master of the Rolls, currently Sir Terence Etherton. He is the second ranking judge in England and Wales and one of the most senior in the UK. The holder of the office, which dates back to at least the 13th century, was originally responsible for the safe-keeping of charters, patents and records of important court judgments written on parchment rolls. He still has responsibility for documents of national importance, as chairman of the Advisory Council. The Master of the Rolls was the nominal head of the Public Record Office, which preceded The National Archives, and has headed the Advisory Council since it was created by the Public Records Act. The Master of the Rolls is now supported by two members who act as his deputies, one for the Council and one for the Forum on Historical Manuscripts and Academic Research.

6. How independent are you?

The Council is an advisory body of the Department for Digital, Culture, Media and Sport, and its members (though not civil servants) are appointed by that department's Secretary of State. But their decisions are taken, and recommendations made without reference to government, and without fear or favour. Members regularly challenge government departments on why documents remain classified or other reasons given for not handing them over to The National Archives,

or on a department's unwillingness to reveal information in response to Freedom of Information requests, or taking too long in carrying out their responsibilities handling important and historical documents. Like other bodies of a similar size or type, it receives support, including secretariat support from a government department – in this case, The National Archives, based in Kew. But the Advisory Council is not part of The National Archives, and its chief executive attends meetings of the Council *ex officio*, usually reporting on latest developments and answering questions, with his staff, from Council members.

7. What sorts of applications does the Advisory Council consider?

There are two types:

- **Closure applications** ('closure at transfer') are made when a government department wants to keep closed historical information contained in records being transferred to The National Archives, because of provisions (called exemptions) in the Freedom of Information Act - for instance, relating to the safety of individuals or national security.
- **Retention applications** are made when a department wishes or is required to retain any record which, because of its age, would otherwise be due for transfer to The National Archives or, if not selected for permanent preservation, for destruction. The Advisory Council then advises the Secretary of State for Digital, Culture, Media and Sport on whether to agree. This can happen when, for instance, there is a business need to keep files, perhaps in relation to continuing commercial contracts or, for example, because they are relevant to compliance with health and safety legislation. Other reasons for retention applications are review backlogs, as a result of which decisions on permanent preservation and/or on any continuing sensitivity remain to be taken, and security considerations. The National Archives does not accept records the security classification of which remains at or above Secret, so departments must apply for authority to retain any such records before they exceed the age of 20 years

8. How many records does the Council consider?

It is important to realise that the vast majority of documents selected for permanent preservation are transferred fully 'open' to The National Archives and can be viewed by anyone – over 95% in 2016/17. In only a very small proportion of cases do departments ask for files, or parts of files, to be kept closed. This is very often because they contain personal information or material which could be harmful to individuals, for instance family members of murder victims. Information that could harm national security or damage the national interest is either retained by the department that owns it or transferred closed to The National Archives if its security classification so allows. In 2016-17, council members considered 4,290 closure applications and 986 retention applications. The number queried has seen a big rise in the last two years – to 506 closure applications and 116 retention applications.

The number then amended or withdrawn has more than tripled from 83 to 264 in just two years. It is not feasible to scrutinise tens of thousands of often lengthy individual records, but departments wishing to retain records or keep them closed have to provide a summary of their contents and an explanation of why they should be retained or closed. Departments do heed the views of the Advisory Council, and when members are unconvinced of the sensitivity of a document, they can ask to see it.

9. What is your role with Freedom of Information requests?

Records retained by departments and those closed when they are transferred to The National Archives are still subject to the Freedom of Information Act and anyone can make a request to see them. When so-called “qualified exemptions” are being used to keep documents closed the Advisory Council, acting on behalf of the Secretary of State, has a right to be consulted, and is required to carry out a “public interest test”. A panel of three Council members is convened to consider whether it is in the public interest to release the information, or keep it closed. Examples include when a document contains information which could cause harm to individuals, or material that could damage national security, criminal investigations, or Britain’s international relations. These panels considered 400 cases in 2016/17, almost half as many again as in the previous year.

10. Why aren’t your meetings in public?

Most of the information the Advisory Council considers is sensitive. It needs to know why, and to be able to challenge departments who attend its meetings, and freely discuss how a case should be handled. If meetings were public, the Council would not be able to do its job in independently scrutinising closure and retention applications. A summary of meetings is published on its website, and the Council publishes an annual report with details of its work.

11. What is the Forum on Historical Manuscripts and Academic Research?

The Forum is a subcommittee of the Advisory Council. It is made up of Council members, as well as external representatives appointed for their knowledge and experience of historical records.

It was set up in 2010 to enable recommendations to be made to the Advisory Council about activity relating specifically to historical manuscripts (independent archives), and a place for discussion about academic research issues. It considers and provides advice on matters relating to manuscripts, records and archives, other than the public records, and in particular:

- 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 appropriate ministers on the allocation of archives and manuscripts accepted for the nation in lieu of tax
- other issues that would formerly have come within the terms of reference of the Royal Commission on Historical Manuscripts.

The Forum acts 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. The Forum will also provide an open, independent and authoritative advisory voice to The National Archives, to support research and academic liaison there.

12. Independent Archives

The Forum on Historical Manuscripts and Academic Research advises The National Archives on strategies and policies for locating, documenting and caring for private archives. This includes the provision of advice relating to the acceptance of manuscripts in lieu of tax. This function supports the responsibilities discharged by the Historical Manuscripts Commissioner under the Historical Manuscripts Commission's Royal Warrant of 1869.

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