

Advisory Council on National Records and Archives

Status, Structure, Role and Functions

This explanatory note on the Council and its work should be read in conjunction with the Council's Terms of Reference ('TOR'), which it supplements. The TOR are published together with this note on the Council's website.

The Status of the Council

The Advisory Council on National Records and Archives (the 'Council') is an advisory Non Departmental Public Body ('NDPB') which performs statutory functions under the terms of the Public Records Act 1958 (the 'PRA') and the Freedom of Information Act 2000 ('FOIA'), relating to public records. It also performs certain functions in respect of independent archives, advising the Historical Manuscripts Commissioner (as appointed under the terms of the 2003 revision of a Royal Warrant of 1869, which first established the Historical Manuscripts Commission).

When discharging responsibilities for public records¹ and other kinds of historical records, archives and manuscripts, the Secretary of State for Digital, Culture, Media and Sport takes independent advice from the Council, which speaks to the government on these issues on behalf of the general public.

The Council has no executive functions or powers. As an advisory NDPB, it falls within the remits of the Parliamentary Commissioner for Administration (the 'Parliamentary and Health Service Ombudsman') and the Commissioner for Public Appointments.

The structure and membership of the Council

The Council was created in 2003 and encompasses two previously-established bodies, the Advisory Council on Public Records and the Advisory Council on Historical Manuscripts. Since then, these two bodies have functioned as one and now advise the Secretary of State for Digital, Culture, Media and Sport.

The Advisory Council on Historical Manuscripts was turned into a subcommittee of the Advisory Council on National Records and Archives in 2010, to provide a means through which recommendations can be made to the Council about activity relating specifically to historical manuscripts (independent archives), as well as a place for discussion about academic research issues. The subcommittee is known as the Forum on Historical Manuscripts and Academic Research (the 'Forum').

¹ Public records, as defined in the Public Records Act 1958, are the records of central government and the central courts of law and related organisations and bodies.

The Council is chaired by the Master of the Rolls. The Master of the Rolls is a judge of the Court of Appeal of England and Wales and is the President of its Civil Division, second in judicial importance to the Lord Chief Justice. The Master of the Rolls is the statutory custodian of the records of the Chancery of England and has the statutory charge and superintendence of manorial records. The current Master of the Rolls is Sir Terence Etherton.

The Council's members are appointed by the Secretary of State, by public appointment. They come from a wide range of fields, including users of historical records, such as historians and journalists; retired senior public, civil and diplomatic servants and professionals with relevant information expertise, including but not limited to archivists, compliance practitioners, digital curators, lawyers and records managers.

The Council's Role and Functions

The Council's statutory and other main duties are set out in its TOR. The Council has a particular statutory responsibility to advise the Secretary of State on matters relating to public records, including preservation and public access to them, and the facilities provided for the public at The National Archives. The Council's statutory responsibilities concerning access to historical public records were augmented by the FOIA, which sets them out in more detail.

In addition, the Council advises the Secretary of State on major strategic archival policy matters and matters relating to the preservation of and public access to local authority, business and independent records, and archives and manuscripts in archival repositories and in private hands.

The Council advises the Historical Manuscripts Commissioner on matters relating to non-public records. As specified in its TOR, it does so principally through its sub-committee, the Forum.

The National Archives is responsible for the public records of the United Kingdom government and the Council's remit in relation to public records is the same.

The remit of the Historical Manuscripts Commission and of the Council in relation to non-public records extends to the whole of the United Kingdom, without prejudice to the special responsibilities of the Keeper of the Records of Scotland and the Deputy Keeper of the Records of Northern Ireland. The Council therefore seeks to have representation from all parts of the United Kingdom. The National Archives of Scotland and the Public Record Office of Northern Ireland are responsible for records of Scotland and Northern Ireland respectively; the Welsh Assembly has yet to establish a Welsh national archives or a comparable advisory body.

As agreed with the Secretary of State, the Council receives support for its work from The National Archives (which meets the costs of the Council's meetings, including the travel expenses incurred by its members) and the Secretary to the Council is an employee of The National Archives. However, the Council is entirely independent of The National Archives and the two bodies function independently. The Council has no role in the day-to-day running of The National Archives and no authority over its Chief Executive, either in that capacity, or as Keeper/Historical Manuscripts Commissioner. The Chief Executive attends meetings of the Council *ex officio*.

Additional information on the work of the Council

Access to public records:

The greater part of the Council's time is spent on work relating to access to public records. The statutory basis for this work is the PRA and the FOIA.

Under the FOIA, the Council is responsible for advising the Secretary of State on the application of the FOIA to historical public records (those over 20 years old). In particular, this involves acting on behalf of the Secretary of State in advising government departments in relation to the release or non-disclosure of particular records.

The Council advises on 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 [FOIA] to information contained in public records that are historical records within the meaning of Part VI of that Act';

The Council advises on 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.

The Council also advises the Secretary of State in relation to his or her responsibility under the PRA to examine applications from departments for the retention² 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 Secretary of State is always advised by the Council before signing a retention instrument.

The Council scrutinises closely the arguments advanced for the use of qualified FOIA exemptions and for retentions, and departments are often asked to reconsider their proposals. This can lead to a record being made available after all. If the Council considers it necessary, it may ask the Master of the Rolls to nominate a member to request access to documents and make recommendations. Typically, the Council examines some 4000 applications for closure under FOIA exemptions and around 1000 applications for retention, each year.

Where the Council is advising on the balance of the public interest in the release or non-disclosure of historical records in response to an application made under the FOIA, it may do so outside full Council meetings. Typically, panels of three Council Members will review, consult, and report their conclusions to the Council Secretary on behalf of the whole Council. Reports on the conclusions of such panels are presented to the next meeting, when cases with particular significance for the

² 'Retention' is the process under which government departments and other records-creating bodies may retain records themselves rather than transfer them to The National Archives. The Public Records Act 1958 s3(4) provides that records may be retained with the approval of the Secretary of State for Digital, Culture, Media and Sport. He issues 'instruments' authorising retention, which may be in two forms: normal instruments identify particular documents or parts of documents, while blanket instruments identify whole classes of documents. Where only part of a document is retained that part is said to have been 'redacted'.

Council's work may be discussed. Panels are convened as often as is necessary to deal with the volume of access requests under the FOIA for historical public records.

Other main responsibilities of the Council:

As set out in its TOR, the Council's responsibilities cover a wide range of matters, concerned with representing the interests of the public in records issues of all kinds, and with records both public and private.

Subjects considered by the Council include, for example:

- public services provided by the National Archives and other UK archives;
- preservation policy for records and manuscripts of all sorts, including the criteria governing the selection of public records for permanent preservation (but not the application of the criteria to particular records, for which the Keeper is responsible);
- the impact on records and archives of new legislation;
- the sale and export of historical manuscripts;
- the level and fairness of fees.

Acting on behalf of the Council, the Forum considers policy proposals relating to non-public records, and has a particular interest in ensuring the preservation of independent collections of manuscripts for the benefit of both owners and the public in all of the above matters. The Forum advises on action in support of the maintenance and care of historical manuscripts held in private hands. It also gives advice on research to advance the field of archives and information management, as well as to underpin and support the use of archives.

Reporting

The Council reports to the Secretary of State every year in an annual report by the Master of the Rolls, which is published with the Annual Report of The National Archives, although the Master of the Rolls may approach the Secretary of State at other times when required.

Last update: October 2017