



ADVISORY COUNCIL ON NATIONAL RECORDS AND ARCHIVES

Date: 14 May 2018
Time: 11:00-16:30
Venue: The National Archives, Kew

Chair: Sir Terence Etherton, Master of the Rolls

Members: Mr Trevor Woolley, Deputy Chair
Ms Hillary Bauer
Dr Helen Forde
Dr Elizabeth Lomas (from 12.30)
Mr Michael Smyth
Ms Lesley Ferguson
Ms Jeannette Strickland
Lady Moira Andrews
Ms Liz Copper
Mr John Wood

Non-members: Mr Jeff James, Chief Executive, The National Archives
Ms Lucy Fletcher, Associate Director, Government Audience, The National Archives
Ms Louisa Green, FOI Manager, The National Archives
Ms Victoria Davies, Access at Transfer Manager, The National Archives
Mr Sam Whaley, Head of the Chief Executive's Office, The National Archives
Mr Peter Farr, Office of the Master of the Rolls
Ms Anne Hardy, Secretary to the Advisory Council
Mr Stuart Abraham, Information & Legislative Policy Manager

1. Welcome, apologies and introductions

1.1 The Chair introduced the new Advisory Council Secretary who was attending the meeting as an observer.

1.2 There were apologies from Ms Angela Kelly, Dr Peter Gooderham and Sir John Ramsden.

2. Minutes and matters arising

2.1 The minutes of the meeting of 12 February 2018 were agreed as an accurate record.

2.1.1 The summary minutes of the meeting 12 February for the website were agreed.

2.2 Matters Arising

Action Log:

Members went through the outstanding actions.

Members agreed that a correspondent who had written to the Chair had raised some valid points about the views and decisions of departments in the material being preserved. They requested more information from The National Archives about the guidance provided, statutory obligations and the selection process in general. Ms Fletcher agreed to provide a paper for the next meeting and to circulate details of the selection process.

An additional meeting or training day was discussed and members were keen that this be taken forward. It was suggested that this might also provide an opportunity for a department representative to come along and explain how they approach the selection process.

Derogatory Comments: A draft paper by the Working Group had been circulated for consideration. The paper provided background and explanations relating to the use of the FOI exemptions applied in FOI panel cases.

The paper had been produced in support of the Council decision that it was not qualified to determine when an absolute exemption was appropriate.

A number of minor revisions were suggested and it was agreed to circulate a final paper.

Council members welcomed the paper, which was felt to be extremely helpful. They thanked the Working Group for their hard work.

3. Revision to Guidance

3.1 Mr James noted plans to review the Code of Practice on Section 46 of FOIA. The revision would require input from a number of bodies and government departments.

3.2 A paper had been circulated, which outlined the high level process and timescale for the review and Mr James advised that a new staff member had recently been recruited to lead on it.

3.3 Council members were keen to be involved and it was suggested that the Working Group meet with the lead to talk about the views and concerns of the Advisory Council. The Chair also requested that the Council have an opportunity to see any draft documentation and to comment on the final revised version.

3.4 Unresolved Disagreements

3.4.1 Following the issue raised by the Working Group in 2017, concerning instances where a department sought to transfer a record closed but was unable to persuade the Council to support the closure, a paper had been drafted which outlined a suggested process to be followed in such cases.

3.4.2. It was felt that, with a few minor amendments, the paper should be accepted as the process currently adopted by Council. It was further agreed that if, at the end of the process, the Council's view was not supported, reference should be made to this effect in the Annual Report.

3.4.3 The Head of the Chief Executive's Office advised that, with regard to the specific case which had given rise to the issue, the department had been made aware of the suggested process and would be following it in seeking Ministerial approval for the transfer of the document closed.

3.5 FOI Requests

3.5.1 During a recent review of the Council's role, the Working Group had identified a potential gap in the Government's current FOI processes.

3.5.2 The Cabinet Office, which leads on policy in this area is now aware of this and is grateful to the Council for picking up the issue. It appears that there had formerly been a process, but it was currently in abeyance. Cabinet Office have agreed to attend the Council meeting in July and to bring an options paper for consideration. They are also happy to discuss the issue further with the Working Group in the meantime.

4. Advisory Council Annual Report

4.1 A first draft report for 2017-2018 had been prepared and circulated for comment. Members acknowledged that some information was still outstanding, especially with regard to figures.

4.2 Members were asked to provide any comments to the Deputy Chair or Secretary, so that the report could be finalised.

5. Department for Exiting the EU

5.1 Further to discussions at the meeting in February, DExEU had been asked to provide a more detailed memorandum or guidance paper regarding criteria for engaging Section 27(1) on the basis that the release of a record might undermine the UK's negotiating position in the Brexit process.

5.2 A revised paper had been received and circulated. Following discussion, the Council approved the paper, on the understanding that the closure period for records in such cases was revised to 2023. It asked that an update paper be provided in early 2019.

5.3 Council members agreed that the schedule entries carried over from January and February, awaiting agreement of the guidance, should now be circulated for consideration.

6. General Data Protection Regulations

6.1 Mr Abraham joined the meeting to give an update on the effects of the new GDPR legislation on archives.

6.2 He had been working with DCMS on the implications of the new legislation, which would replace the current Data Protection Act. One of the main aspects of the new law was to give more control to the individual. However, it was acknowledged that this did not necessarily sit easily with archives, as individuals would have the right to ask for data to be removed or amended and this was likely to provide a number of challenges.

6.3 It was agreed that published guidance on the new regulations, including transparency and re-use, would be vital and a member who had been involved in the drafting of the guidance advised that it would be circulated in due course.

6.4 Mr Abraham advised that the main guidance for archival institutions was to keep on collecting. The National Archives had been working with record offices and colleagues across the sector providing information and reassurance. Information regarding privacy and selection policies was published on The National Archives website and a blog had been written and posted on the website, which was also very helpful.

6.5 A member advised that she would seek to circulate the draft guidance document to Forum and Council members for comment and was hoping that the final document would be ratified by the ICO later in the year.

6.6 Mr Abraham was thanked for his work on this issue and for his presentation to the Council.

7. Departmental Retention Requests

The Council considered papers from the following departments relating to the retention of records.

- Department of Education
- Department of the Environment
- Ministry of Justice
- Northern Ireland Office
- The National Archives
- Attorney General's Office
- Ministry of Housing, Communities and Local Government
- Cabinet Office
- Department for Transport.

Requests were for between one and three years in each case, either because the relevant records form part of a backlog awaiting appraisal or preparation for transfer, or (in one case) because they are still required for administrative purposes.

Council members asked for assurance that departmental non-executive directors were aware of departmental record policies and the work of the Advisory Council. The Chair suggested that engagement with these directors might be useful and that an invitation to attend a Council meeting might be extended.

Mr James agreed to seek advice on how communication might be taken forward.

8. Access to Records

Two members recused themselves from discussion on specific entries.

The Council formally approved the acceptance of schedules seen outside the meeting, with the exception of any queries which will be brought to the meeting.

Outstanding Queries

Paper 8.1 Queries outstanding from remote schedule

The Council was content to approve those applications which had not been withdrawn by departments on the basis of the clarification or additional information provided by the departments, with the exception of two entries where security and Parliamentary privilege were an issue.

It was noted that, occasionally, if records were to be viewed, appropriate security clearance would be required. At present, very few Council members had that clearance. Following discussion, Mr James agreed to look into the possibility of obtaining security clearance for members. Any members who were interested in taking this forward were asked to contact the Secretary.

Paper 8.2 Queries from February 2018

The Council was content to approve those applications which had not been withdrawn by departments on the basis of the clarification or additional information provided by the departments, with the exception of the certain papers, which were carried over, as the relevant department had yet to respond.

Paper 8.3 Queries from remote schedule April/May 2018

In April, a schedule of closure applications and a schedule of retention applications were sent to members. Members were asked to raise any queries within 10 days.

TNA's Access at Transfer Manager collated the queries and a list of them was circulated with the papers for this meeting, with responses being provided where possible. At this meeting, members were asked if they were content with the responses provided, whether in written form or orally. Where a response has not been provided, or members remained unhappy, the queries were carried forward.

Retention

Five entries were carried over as responses had not been received from the relevant department.

9. Forum on Historical Manuscripts and Academic Research

9.1 The Deputy Chair advised that a meeting of the Forum had recently been held. The meeting had provided an opportunity to introduce the two new Forum members to the work being carried out by The National Archives within the wider archive sector. An update had

been given on The National Archives' sector leadership role and the state of archives around the country.

9.2 Consideration was being given to the arrangement of a conference or symposium to mark the 150th anniversary of the Historical Manuscripts Commission in 2019 and the Forum would be consulted on the programme and attendee lists.

9.3 The Deputy Chair advised that DCMS had now given permission for the recruitment of non-Council members to the Forum in a process to be run by The National Archives, without the need to adhere to the procedure for making public appointments. This will speed up the process, which, it was hoped, will commence within the next few weeks.

10. FOI Panel Update

10.1 The Council reviewed the panel update paper. Following discussion at the previous meeting, Members were pleased to note that the date the application was originally received had now been added to the FOI template.

10.2 Council members acknowledged the circulated guidance regarding Section 38 – assessing mental endangerment - which was very helpful.

10.3 Following some recent occasions where panel responses were delayed, the FOI Centre had produced additional guidance for consideration. The new guidance was considered by the Council and some minor amendments were agreed.

11. CEO's Update

Mr James updated the Advisory Council on the following:

- **Non-Executive Board Members** – two new members had recently been appointed to TNA's Board and members extended an invitation to both to attend a future Council meeting if they thought it would be helpful to their role.
- **Foundation** – The process of establishing a charitable foundation to support education and engagement initiatives, both at TNA and in the archives sector more widely was now reaching a conclusion.
- **20 Year Rule** – Mr James would be meeting with the Secretary of State later in the week to update him on the Government's progress in delivering the transition to the 20 year rule and on wider issues of compliance.
- **Windrush** – The National Archives had received media inquiries and a number of FOI requests relating to the Windrush 'landing cards' issue recently reported in the media. The Advisory Council Secretariat had also received two FOI requests relating to Windrush and the Chair had been briefed accordingly.
- **Brexit** – The Government's Spring Statement had confirmed funding for The National Archives to deliver its obligations under the EU Withdrawal Bill, specifically to publish the updated statute book on legislation.gov.uk.

- **Corporate Strategy** – Work had commenced on a new four-year plan for The National Archives. A draft would be brought to the Advisory Council for discussion, probably in November or February.

12. Any Other Business

12.1 Council members had previously discussed the possibility of holding an extraordinary meeting to provide members with additional information and training on issues of interest.

Members agreed that a date should be arranged, preferably in September.

12.2 The Deputy Chair advised that, following the departure of some members, the Working Group had diminished in size. He asked that any members willing to join the group contact him.

There being no further business, the meeting was closed.