



**ADVISORY COUNCIL ON  
NATIONAL RECORDS AND ARCHIVES**

**Date:** 10 February 2020  
**Time:** 11:00-15:00  
**Venue:** Conference Room A, The National Archives (TNA), Kew, Surrey TW9 4DU

**Chair:** Sir Terence Etherton, Master of the Rolls

**Members:** Mr Trevor Woolley, Deputy Chair  
Ms Hillary Bauer, (Deputy Chair of the Forum)  
Mr Michael Smyth  
Ms Lesley Ferguson  
Dr Helen Forde  
Ms Liz Copper  
Mr John Wood  
Mr Stephen Hawker  
Mr Martin Howard  
Professor Phillip Johnson  
Professor Leon Litvack  
Ms Helene Pantelli  
Mr David Rossington  
Mr Martin Uden

**Minutes:** Asha Bagayat, Head of Governance (TNA)

**Non-members:**

**TNA:** Mr Jeff James, Chief Executive and Keeper  
Ms Clare McNulty, Head of Strategy Development  
Mr Sam Whaley, Head of Strategy and CEO's Office  
Ms Victoria Davis, Senior Access Manager  
Ms Helen Potter, Head of the Freedom of Information Centre

**MR's Office:** Mr Samuel Allan, Office of the Master of the Rolls

**Departmental:** None  
**Attendees**

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**SUMMARY OF ACTIONS**

Actions agreed at the meeting

**ACTION:** The Head of Governance to update the Actions Log with items reported at the meeting.

**ACTION:** The Advisory Council asked that following the Government reshuffle announcement, a note be sent to members advising them of the new DCMS Ministerial team.

**ACTION:** The Council noted the update but felt it did not have sufficient information on the methodology, timetable and communications strategy to agree that the approach for returning nuclear records to public access was appropriate and asked that the MoD (and others) attend in person to provide further clarification at the May meeting.

**ACTION:** The Deputy Chair agreed to circulate the 2017 Working Group guidance on derogatory comments to Council members.

**ACTION:** The Deputy Chair of the Forum on Historical Manuscripts and Academic Research agreed to bring an update paper to the May Council meeting on its work.

**ACTION:** The Council asked to be kept updated on the legal position regarding Section 66.

**ACTION:** That the 17<sup>th</sup> Annual Report include statistics on the number of requests the Council has dealt with and how many it has challenged. To highlight the membership changes, explain the Council's objectives, state the health of the process and records system. The report should also include examples of where the FOI Panels have made a difference.

**ACTION:** The Head of Governance to ensure the terms of reference and meeting summaries on the website are up-to-date.

**ACTION:** Cabinet Office to be asked to provide an update on the EU Exit Memorandum and Checklist at the next meeting.

**ACTION:** The Head of Governance to keep Council members updated on the forthcoming DCMS Tailored Review.

**ACTION:** The Head of Governance to write to departments to notify them of the Council's recommendations, including any which will go forward to the Secretary of State with regard to their retention requests.

**ACTION:** The Head of the FOI Centre reported she will be updating guidance and wider materials for members in Egress.

**ACTION:** The Head of FOI Centre agreed to send Council members guidance on Section 41 – information provided in confidence.

**ACTION:** The Head of Governance/Deputy Chair to write to the FCO about the Council's concerns on the inconsistent application of FOIA exemption 27(1) in addition to 27(2) or 41 and to seek their view on the principle.

**ACTION:** The Council requested to see examples of final refusal notices in relation to the application of the Public Interest Test for FOIA requests.

**ACTION:** The Chief Executive and Keeper undertook to keep the Council updated and would present the findings of the document ordering service trial at its July or November meeting.

**ACTION:** The Council supported the trialling of paperless meetings. Members requiring a full hardcopy set of papers should notify the Head of Governance individually.

**ACTION:** The Council agreed that the 2014 Jenkins Report on the Denning papers should be made available to members.

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1. **Welcome, introductions, apologies and declarations of interest**

1.1 The Chair welcomed everyone to the meeting.

1.2 Apologies for absence were received from Lady Moira Andrews, Dr Peter Gooderham and Ms Jeannette Strickland.

1.3 The Chair asked members to declare any conflicts of interest which they had identified in relation to the business of the meeting.

1.4 The following recusals applied:

1.4.1 Ms Liz Copper as an employee of the BBC, will not comment on BBC matters generally and, more specifically, on the recent request in relation to the Lord Denning/Profumo papers from a BBC journalist, which was raised under any other business.

1.4.2 Mr Trevor Woolley was Private Secretary to the Cabinet Secretary for three years of the period covered by the Cabinet Office update under item 7. In the absence of Jeannette Strickland, he agreed to introduce the Cabinet Office item and recuse himself from the discussion.

1.5 The Chair introduced and welcomed Asha Bagayat who has recently joined TNA as its new Head of Governance and will also be providing governance expertise to the Council.

## 2. **Minutes and matters arising**

### **Minutes of the meeting held on 19 November 2019**

2.1 Subject to amending paragraph 5.3 to read “She said the Forum would like to be more actively involved in issues of concern to the archives and academic communities relating to non-government archives,” the minutes of the meeting held on 19 November 2019 were approved as a correct record.

### **Actions Log**

2.2 The Chair went through the Actions Log and noted progress on the various open actions. The following updates were reported at the meeting:

**Action 18/92** – It was agreed that members who would like to seek security clearance should contact the Head of Governance.

**Action 28** – Hillary Bauer, Martin Howard and Philip Johnson have agreed to undertake an Audit in April.

**Actions 43 and 44** – Hillary Bauer confirmed that the Forum did wish to pursue if there was any action it could take to exert influence to ensure that important cultural property was preserved for the nation.

**Action 49** – The Advisory Council agreed to close this action.

**Action 54** – It was noted that the Deputy Chair had set up a Governance Working Group with six other members to review and update processes and procedures. The Working Group will have an initial meeting following the Council meeting.

2.3 **ACTION:** The Head of Governance to update the Actions Log with items reported at the meeting.

2.4 **ACTION:** The Advisory Council asked that following the Government reshuffle announcement, a note be sent to members advising them of the new DCMS Ministerial team.

## 3. **Ministry of Defence (MOD) Nuclear Records Review Update**

3.1 The Council received and noted an update paper from the MOD on their proposed approach and estimated timescale to review the proliferation risk of approximately 78,000 records owned by itself and the Nuclear Decommissioning Authority.

3.2 **ACTION:** The Council noted the update but felt it did not have sufficient information on the methodology, timetable and communications strategy, to agree that the approach for returning nuclear records to public access was appropriate, and asked that the MOD (and others) attend in person to provide further clarification at the May meeting.

## 4. **Access to Records**

4.1 There were no further recusals.

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

### **General Issues**

4.4 In response to questions from members about the use of 40(2) alongside 27(1) in the context of harm to international relations through the release of derogatory comments, the Deputy Chair agreed to circulate to members some work done on the subject by the Working Group in 2017.

4.5 **ACTION:** The Deputy Chair agreed to circulate the 2017 Working Group guidance on derogatory comments to Council members.

### **Outstanding Queries**

4.6 The Council was content to approve the applications on the basis of the clarification or additional information provided by the departments, as more fully described in the attached annex to these minutes.

### **Queries on closure and retentions schedules (November 2019)**

4.7 The Council was content to approve the applications on the basis of the clarification or additional information provided by the departments, as more fully described in the attached annex to these minutes.

### **Queries on closure and retention schedules (February 2020)**

4.8 The Council was content to approve the applications on the basis of the clarification or additional information provided by the departments, subject to certain exceptions, which were either queried, withdrawn or carried over, as the relevant department had yet to respond, all as noted in the annex to these minutes.

### **General**

4.9 A schedule of closure applications, together with a schedule of retention applications, was sent to members prior to the meeting. Members were asked to raise any queries within 10 days.

4.10 The Senior Access Manager collated the queries and a list of them was circulated with the papers for this meeting, with responses being provided where possible.

4.11 At the meeting, members were asked if they were content with the responses provided, whether in written form or orally. Where a response had not been provided, or members remained unhappy, the queries were carried forward.

4.12 The results of the Council's deliberations have been set out in the annex to these minutes.

**At 13.10 the Council adjourned for LUNCH and resumed again at 14:00.**

## **5. Forum of Historic Manuscripts and Academic Research Update**

5.1 The Deputy Chair, Hilary Bauer, provided a verbal update on the December Forum meeting and said it had:

- Received an interesting paper on Manorial Rolls;

- Discussed its terms of reference and remained concerned that all its objectives were “advisory”;
- Decided to look again at its agreed priority areas, in light of the skills audit;
- Still felt that much good work was going on in collaboration with archive managers which, perhaps, members were unaware of, but might be able to assist i.e. keeping in close touch with the work of the TNA “Collections at Risk” team on charities and private archives.
- Wished to receive reports from TNA on outcomes of various workstreams, grants awards and training sessions or conferences involving non-public archives so that the members could have an input; and
- Agreed to keep an eye on “digital capability” issues and the assistance TNA was giving to those involved in non-public archives.

5.2 The Chief Executive and Keeper welcomed the support of the Forum in contributing to the development of policy and support for the sector.

5.3 The Chair welcomed the update and thanked the Forum members for their work.

5.4 **ACTION:** The Deputy Chair agreed to bring an update paper to the May Council meeting on the work of the Forum.

## 6. **Administrative Matters**

6.1 This section dealt with ongoing administrative and process matters which have arisen, largely from the ongoing work of the Working Group, but also from the September 2019 training session.

### **Section 46 Code of Practice Review**

6.2 The Council was presented with the latest draft of the Section 46 Code of Practice of the Freedom of Information Act 2000 (FOIA), following review by the Working Group, which seeks, inter alia, to incorporate new procedures for dealing with absolute exemptions by the Council.

6.3 The Deputy Chair, for the benefit of the newer members, provided an update on the Council’s pursuit of a formal delegation from the Secretary of State in relation to Section 65 and 66.

6.4 The Head of Strategy Development outlined the timescale for the publication of the revised code of practice and said it was nearing the end of the drafting stage. The outstanding issues around S65 and S66 were with DCMS lawyers and the Cabinet Office. Once those issues were resolved, the draft code would then be subject to a 12 week public consultation before final review and publication.

6.5 **ACTION:** The Council asked to be kept updated on the legal position regarding S66.

### **Production of the Annual Report**

6.6 The Council was presented with last year’s Annual Report and invited to review and suggest the lines on which further work should be undertaken to produce the 17<sup>th</sup> Annual Report, which would be presented at the May meeting for agreement.

6.7 **ACTION:** That the report include statistics on the number of requests the Council has dealt with and how many it has challenged. To highlight the membership changes, explain the Council’s objectives, state the health of the process and records system. The report should also include examples of where the FOI Panels have made a difference.

### **Website Updates**

- 6.8 The Head of Governance provided a verbal update on changes made to the Advisory Council website pages. She reported the membership and register of interest pages were now up-to-date and she would be reviewing the terms of reference and the meeting summaries in the next few weeks.
- 6.9 **ACTION:** The Head of Governance to ensure the terms of reference and meeting summaries on the website were up-to-date.

#### **EU Exit Memorandum Update**

- 6.10 The Council received and noted an update on the delay to the revision of the Explanatory Memorandum on EU Exit.
- 6.11 **ACTION:** Cabinet Office to be asked to provide an update on the EU Exit Memorandum and Checklist at the next meeting.

#### **Tailored Review**

- 6.12 The Chief Executive and Keeper reported that the new Head of Governance will be leading on coordinating the Tailored Review on behalf of TNA and ACNRA. DCMS have confirmed both bodies will be reviewed together.
- 6.13 **ACTION:** The Head of Governance to keep Council members updated on the forthcoming DCMS Tailored Review.

### **7. Departmental Retention Requests**

- 7.1 The Council considered papers from departments relating to the retention of records. In addition, a number of departments had provided updates, further to requests from members made at previous meetings.
- 7.2 **The outcome of its deliberations is set out below. Any resulting approval recommendations will then go forward to the Secretary of State.**
- 7.3 **ACTION:** The Head of Governance to write to departments to notify them of the Council's recommendations, including any which will go forward to the Secretary of State with regard to their retention requests.

There were applications for retentions of between one and five years from the following departments:

- Cabinet Office
- Ministry of Justice

Due to an administrative error a Home Office retention request, for three years, was inadvertently missed off the agenda. The Deputy Chair agreed the request could be considered outside the meeting. The request was circulated to members and considered.

Updates were received from the following departments:

- Department for Education
- Ministry of Justice

Updates were also received from the following arm's length bodies:

- Animal and Plant Health Agency
- Competition and Markets Authority

## 8. **FOI Panel Update**

- 8.1 The Council received a paper providing an overview of the issues and work undertaken by Panels, which included the most recent service statistics, the high volume of requests being handled by the FOI Centre, and notice of an online user experience survey which would be carried out in February/March 2020.
- 8.2 The paper also noted recent issues in relation to the application of Section 27(1) and 27(2) and Section 41 and guidance from the Foreign and Commonwealth Office (FCO) on this.
- 8.3 **ACTION:** The Head of the FOI Centre reported she would be updating guidance and wider materials for members in Egress.
- 8.4 **ACTION:** The Head of FOI Centre agreed to send Council members guidance on Section 41 – information provided in confidence.
- 8.5 **ACTION:** The Head of Governance/Deputy Chair to write to the FOC about the Council's concerns on the inconsistent application of FOIA exemption 27(1) in addition to 27(2) or 41 and to seek their view on the principle.
- 8.6 **ACTION:** The Council requested to see examples of final refusal notices in relation to the application of the Public Interest Test.
- 8.7 The Chair thanked Panel members for their work.

## 9. **CEO's Update**

- 9.1 The Chief Executive and Keeper introduced his update paper on current issues and ongoing matters.
- 9.2 In reference to the Surrey Police records removed from the Surrey History Centre, the Council noted that police records did not fall under the Public Records Act, but that some forces voluntarily deposit with their local archive. Some Metropolitan Police Service records were held at TNA due to historical governance arrangements. As a point of principle, the Chief Executive and Keeper said he would like to see police records managed in a way commensurate with the Public Records Act, but that this would have huge implications on police forces, TNA and the place of deposit network.

### **Update on the document ordering service trial**

- 9.3 The Council received and noted a paper providing an update on TNA's document ordering service trial which had generated media interest. The Keeper and Chief Executive provided reassurance that the vast majority of users will be unaffected by the changes, but would monitor if any groups were disproportionately affected.
- 9.4 **ACTION:** The Chief Executive and Keeper undertook to keep the Council, under its remit of ensuring access to information, updated and would present the findings of the document ordering service trial at its July or November meeting.

## 10. **Any Other Business**

- 10.1 The Head of Governance invited members for their thoughts on running paperless meetings to reduce waste. The Council generally agreed that it was helpful to have hardcopies of the schedules and a copy of the agenda frontsheet at meetings.

- 10.2 **ACTION:** Members requiring a full hardcopy set of the meeting papers should notify the Head of Governance individually.
- 10.3 It was noted that the Council's Media Sub-committee had provided a statement to a BBC journalist on the Lord Denning/Profumo papers, however the Council had not been mentioned in the article.
- 10.4 **ACTION:** The Council agreed that the 2014 Jenkins Report on the Denning papers should be made available to members.
- 10.5 There being no further business, the meeting was closed at 15.00.

The next meeting of the Council will be held on **11 May 2020**, at TNA premises.