



OPERATIONAL SELECTION POLICY OSP37

FREEDOM OF INFORMATION ACT RECORDS

**(COVERING DATA PROTECTION ACT AND
ENVIRONMENTAL INFORMATION REGULATIONS RECORDS)**

March 2006

1 Authority

- 1.1 The National Archives' Acquisition and Disposition policy statements announced our intention of developing, in consultation with departments, Operational Selection Policies across government. These policies would apply the collection themes described in the policy to the records of individual departments and agencies.
- 1.2 The National Archives' Appraisal Policy statement (August 2004) announced a new emphasis to Operational Selection Policies:

The National Archives' will develop generic archival appraisal guidance for categories of records such as those produced by similar types of departments (agencies, regulatory bodies) or those produced by activities common to many departments (research papers, inspection reports). (section 2.4.3.6)

This Policy provides generic appraisal guidance for records relating to activities conducted under or relating to the Freedom of Information Act 2000, as detailed in section 2 below.

- 1.3 Operational Selection Policies are intended to be working tools for those involved in the selection of public records. This policy may, therefore, be reviewed and revised in the light of comments received from the users of the records or from archive professionals, the department's experience of using the policy, or as a result of newly discovered information. There is no formal cycle of review but we would welcome comments at any time. The extent of any review and revision exercise will be determined according to the nature of the comments received.

If you have comments on this policy, please e-mail:
records-management@nationalarchives.gov.uk

or write to:

Acquisition and Disposition Manager
Records Management Department
The National Archives
Kew
Richmond
Surrey
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2 Scope

- 2.1 This Operational Selection Policy covers the policy on selection of public records generated by the processing of Freedom of Information Act (FOI) access requests and on the selection of the information that has been requested:

- 2.1.1 Records containing information released in response to FOI access requests;
- 2.1.2 Information made available via websites following FOI access requests;
- 2.1.3 Records contained in systems established by departments to track FOI access requests.

As the regimes covering access to environmental information under the Environmental Information Regulations and to personal information under the Data Protection Act are covered by sections 39 and 40 of the FOI Act respectively, all references here to records created in the process of handling FOI requests should be understood to include records generated by requests under those regimes also.

- 2.2 The policy does not cover non-public records generated by authorities covered by the Act but which are not public record bodies.
- 2.3 This policy does not cover the development of overall government FOI policy in the Home Office or the Department for Constitutional Affairs (DCA) at times when they were responsible for FOI policy (or the Department for the Environment, Food and Rural affairs for Environmental Information Regulations policy), or departmental policy in The Office of the Information Commissioner and The National Archives. Nor does it cover policies developed by authorities detailing how they intend to handle access requests. The selection of such records will be considered on a case-by-case basis in each department according to future Operational Selection Policies and existing Acquisition Policy criteria applying locally.
- 2.4 This policy does not cover publication schemes issued under the Freedom of Information Act, which will be covered in the Operational Selection Policy OSP 36 *Publications and Grey Literature*.
- 2.5 The records addressed in this Operational Selection Policy fall within the scope of the following Acquisition Policy themes:
 - 2.2.1.2 Formulation of policy and management of public resources by the core executive¹
 - 2.2.2 Interaction of the state with its citizens
- 2.6 This Operational Selection Policy provides guidance on the identification of records for permanent preservation. It does not provide guidance on access to selected records.

3 Methodology

¹ Quoted here because of the stated intention that one of the principal motives for introducing FOI in the UK was to promote better government.

- 3.1 Initial guidance to government departments on the selection of records related to Freedom of Information Act activities was drawn up by The National Archives in consultation with the Office of the Information Commissioner and the Department for Constitutional Affairs in January 2005. It was intended that this guidance would be revised in the light of experience of the operation of the Act. Following consideration of the guidance by the Records Selection and Appraisal sub-group of The National Archives' Management Board at its Spring 2005 meeting, it was agreed that the revision should take the form of an Operational Selection Policy.

4 Selection policy for categories of Freedom of Information act information

4.1 Information released following an FOI access request

By its very nature, information released by departments following FOI access requests will constitute an undifferentiated mix. While there may be patterns evident from the totality of requests made to any authority under the Act, the value of any one piece of released information is likely to be primarily of interest to the requester. It is clear that while some pieces of released information would satisfy The National Archives' published acquisition criteria, many will not, so any decision to take in all released information would necessarily gather in a large proportion of material which does not satisfy The National Archives' Acquisition Policy criteria.

The benefits of capturing such an amorphous set of information would be minimal and would not outweigh the costs to The National Archives of doing so. Therefore The National Archives will not automatically acquire all information released in response to an FOI access request. Such information should continue to be appraised according to its merits as part of the record(s) of which it forms a part under the existing general arrangements for appraisal of records applying in the authorities or more specific Operational Selection Policies where they exist..

However, the possibility exists that information of some historical interest may be released under FOI which comes from records already identified as not required by The National Archives, or likely not to be picked up during routine file review, (e.g. significant incidents recorded in an otherwise uniform and largely uninteresting case file series). Departments should make arrangements to ensure that such 'hidden nuggets' can be notified by FOI staff to colleagues conducting selection reviews to ensure that they can be considered under the appropriate appraisal criteria.

4.2 Systems established by departments to track FOI requests

Most public record authorities have put in place systems, either workflow based or using other available tools, to track FOI access requests. The

authorities will have a long-term need to retain this information to inform future work and to answer possible appeals or complaints, but it would be possible for The National Archives to take copies of such system information. This system information in itself might contain much information subject to exemptions in any authority where access requests are frequently refused if the system records details of the exempt information or arguments for or against disclosure.

It is likely that future researchers will want to assess the operation of the Act and would value the preservation of at least some of these systems. This would allow researchers in the future to have an independent line separate from the analysis that will be done by the Information Commissioner. However, The National Archives feels it is not appropriate at this stage to identify which authorities' systems should be earmarked for preservation. Our strategy is to await the Information Commissioner's appraisals of departmental performance (in reports under s49 of the FOI Act), from which The National Archives could determine the main foci of requests and any authorities which were failing in their administration of the Act, and make appraisal decisions in the light of this information. Reports monitoring central government performance under the FOI regime are also likely to be issued by DCA and these will provide further information to be considered in reaching this decision. Departments should be aware that The National Archives has a potential interest in the records of these systems, to be determined in due course in the light of the Information Commissioner and DCA reports on the operation of the Act, and that therefore no information should be deleted from these systems until The National Archives is in a position to make an appraisal decision. It should be emphasised that The National Archives' interest is in the records of the handling of access requests, not in the identity of the individuals who made the requests. Therefore there will be no requirement for departments to retain personal information relating to enquirers for longer than these details are needed for the departments own internal administrative needs in handling the access requests.

The trigger for considering such a tracking system for permanent preservation will come from Information Commissioner or DCA reports, but it will be possible to issue formal selection criteria for such systems. The National Archives will therefore work towards the production of an Operational Selection Policy to establish criteria for the selection of records from FOI tracking systems. This would not be a stand-alone criterion – rather it should form part of a wider Policy on case handling systems, with general criteria for selection similar to those set out in OSP 30, *Government and People: the interaction of the State with the Citizen*. This Policy will be considered for production approximately two years after the implementation of the Act, to take proper account of reports issued by the Information Commissioner, DCA and other sources on FOI research.

4.3 Information made available via websites following access requests

Following the government decision that all central government departments should proactively publish FOI disclosure logs on their websites, it is expected that most departments will make the information they release available over their websites either via an underlying database or by posting pages of information or the text of answers directly onto the website. Where the latter course is followed, it is likely that The National Archives' existing website harvesting activity will capture the information without further action for the departments whose websites we are already acquiring (see OSP 27, *The Selection of Government Websites*). Where a database is created, that information will almost certainly not be harvested. It is further considered that The National Archives could not be certain that an authority will have placed all its released information into such an arrangement, so we could not start from the assumption that such a collection would include all released information. Some departments may create separate websites solely for the purpose of publishing disclosure log information, and these will not be routinely collected by The National Archives' website harvesting exercise.

To make special efforts to collect electronic information from these databases would be contrary to the policy set out at paragraph 5.1 above. The National Archives therefore concludes that databases of released information designed for web access should not be acquired separately. The National Archives will periodically reappraise the scope of the website harvest detailed in OSP 27 following the initial Information Commissioner and DCA reports into the operation of the Act (firstly alongside the proposed exercise to identify tracking systems information worthy of permanent preservation detailed at paragraph 5.2 above). If it appears that an authority which is placing released information on line that is not being captured by The National Archives' regular harvest merits special attention, then consideration will be given to adding the website to the harvest.

4.4 Publication schemes

A key part of the operation of the FOI Act is the regular publication of information by bodies according to agreed publication schemes. Publication schemes are not covered in this Operational Selection Policy, and are instead dealt with in the Operational Selection Policy OSP 36 *Publications and Grey Literature*, which deals generally with issues on the selection of published public records.

4.5 Office of the Information Commissioner records

The Office of the Information Commissioner agreed in 2004 to develop an Operational Selection Policy with The National Archives, but the pressure of work in the run-up to the Act has prevented this being taken

forward. A Policy will be developed when resources allow this work to be taken forward.

5 Implementation

Departments should establish procedures to ensure that staff handling FOI requests inform those responsible in departments for review work where access requests result in the release of significant historical information² from series not or not likely to be selected, and that file reviewers should take this into account during selection review. Where series are scheduled for automatic destruction, an alternative approach should be devised to safeguard records containing 'hidden nuggets' from disposal without further consideration. The National Archives' next revision of the *Documentation of Records Work* standard will address this issue.

It is not intended that departments establish formal procedures to achieve the safeguarding of such 'hidden nuggets' – rather that staff handling information access requests are made aware by means of routine internal communications of the possibility of such items being discovered, and of the possibility of flagging them up for the attention of departmental record staff. Such 'hidden nuggets' are not expected to be found frequently in any given authority, and there would be no value in establishing formal procedures or in amending FOI handling processes and systems to accommodate this requirement.

Departments should note that the approach set out in this Operational Selection Policy will raise the possibility that released information will be used and perhaps cited directly by researchers, writers or campaigners, but that the information itself will not be permanently preserved as part of a selected record. This emphasises again the importance of well-documented and robust disposal policy and practice in departments, which may be called upon to explain the destruction of previously released information. Departments should refer to The National Archives' *Documentation of Records Work* standard to ensure that their practice meets the required standard. Guidance on disposal scheduling for the records produced when processing requests made under the FOI Act can be found in The National Archives' model retention and disposal schedule 14, *FOI Model Retention Schedule*.

Departments will ensure that request handling information recorded on FOI tracking systems is preserved until The National Archives completes its exercise to develop selection criteria for such case handling systems.

² Significant historical information should be defined as information which meets one or more of The National Archives' Acquisition Policy criteria for selection for permanent preservation, merits deposit under The National Archives' Disposition Policy, or which is identified in an Operational Selection Policy as meriting preservation.