

This guidance refers to the section 46 Code of Practice on records management. The section 46 code is under review and the guidance will therefore be amended in due course to reflect any changes resulting from the revised code.



**Information Commissioner's Office**  
Promoting public access to official information  
and protecting your personal information

## **Freedom of Information Act Awareness Guidance Number 8**

### **Records Management FAQs**

The Information Commissioner's Office (ICO) has produced this guidance as part of a series of good practice guidance designed to aid understanding and application of the Freedom of Information Act 2000 (FOIA). The aim is to introduce some of the key concepts in the Act and to suggest the approaches you may take in response to information requests.

We will develop this guidance over time in the light of practical experience.

The FOIA creates a right to access official information and places a duty on public authorities to publish information in line with publication schemes. The FOIA also amends the Public Records Act 1958 and places obligations on public authorities to maintain their records in line with the provisions of a code of practice on records management issued by the Lord Chancellor under section 46 of the FOIA.

#### **A General questions**

##### **1 What benefits does good records management have for a public authority?**

Good records management should be seen as a benefit, not a burden. All organisations, public and private, are advised to have good records management as part of achieving business efficiency, by making sure that information is easily retrieved and properly documented. This will lead to public authorities being able to comply more easily with the Modernising Government agenda and other legislation that affects them, such as the FOIA.

Before the FOI Act came into force, public authorities should already have had good records management for personal information due to the requirements of the Data Protection Act 1998. Records management for the FOIA can be seen as an extension of these existing procedures.

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## **2 What is the section 46 Code of Practice?**

In line with section 46 of the FOIA, the Lord Chancellor has issued a Code of Practice (the code) which provides guidance to relevant authorities (public authorities and any other office or body whose administrative and departmental records are subject to the Public Records Act) on the practice which, in his opinion, would be desirable for them to follow with regards to keeping, managing and destroying records.

## **3 Does the code apply to all public authorities equally?**

Part 1 of the code, relating to records management, affects all public authorities equally. Part II only applies to public record bodies. Each public authority needs to determine how they will meet the requirements of the code, taking into account factors such as their own particular size and circumstances.

## **4 The code appears to be a high-level document. Has any detailed guidance been issued to help with compliance?**

The National Archives has produced detailed model action plans to help different sectors meet the requirements of the code. You can find more information on their website at [www.nationalarchives.gov.uk/recordsmanagement/](http://www.nationalarchives.gov.uk/recordsmanagement/)

## **5 When should I plan to comply with the code?**

All public authorities should now comply with the code and be developing their records management policies and procedures in line with it.

## **6 Can poor records management lead to a breach of the Act?**

Poor records management itself is not a breach of the FOIA. However, the FOIA sets out strict timetables for complying with a request, makes sure the costs of retrieving information are reasonable, and asserts that all recorded information held, wherever it is located within the public authority, can potentially be disclosed. If poor records management leads to the authority not meeting any of these requirements, it will constitute a breach of the FOIA and we will be able to consider using our enforcement powers.

## **7 How will you assess good practice?**

We may, with the consent of the public authority, assess whether that authority has the necessary procedures in place and follows these in line with the code. For instance, by way of an audit. Or, it may become evident that a public

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authority is not complying with the code on the basis of complaints from applicants which relate to their request for information.

## **8 What is the role of the National Archives (TNA) and the Public Record Office of Northern Ireland (PRONI)?**

Where we consider that a public authority is not complying with the code, we have the authority to issue a Practice Recommendation which will specify the steps the authority needs to take to comply.

Before we issue a Practice Recommendation relating to records management, we must consult with the relevant public record office, either TNA or PRONI. More generally, we intend to work with TNA and PRONI to promote public authorities' compliance with the code.

## **9 Is there a link between records management and publication schemes?**

A public authority that maintains an effective publication scheme should already have good practice in records management in relation to information in the scheme. The general right of access under the FOIA should extend these procedures to all other recorded information held.

### **B Records management training**

#### **1 What training should be provided and at what level?**

Good records management will not be achieved unless staff understand the importance of proper record keeping. For non-specialist staff this is likely to be achieved through induction and top-up training. The extent to which individuals are trained in the requirements of records management can be determined by the nature of their posts.

The Human Resources element of this is covered by a specific section of the code and in the model action plans devised by TNA to help public authorities comply with the code.

### **C The Records Management Code - Part 1**

#### **1 What are disposal schedules?**

Disposal schedules will be a key part of your records management policy. They are timetables that set out when individual or groups of records are due for review, transfer to an archives or destruction. This will make it easy to establish whether or not a record exists if you receive a request. It will also give the public

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confidence that a public authority has adequate procedures for identifying records that have been requested.

## **2 Should electronic records be treated any differently to paper-based records?**

The principles underlying records management – creation, retention, identification, and retrieval of records – apply equally to both electronic and paper records. You need to manage business records in electronic form, and detail and monitor procedures for e-mail, documents and other information held on shared and personal hard drives.

You should review procedures relating to information held in deleted files and back-up systems, particularly for keeping track of what information is held in this way.

## **3 What is the status of deleted information and information held in back-up systems?**

Information located in desktop recycle bins is clearly subject to the FOIA as this continues to be held and is easily accessible. Once deleted from the recycle bin the information will also continue to be held unless the electronic record is completely erased from the computer system.

Information in a deleted file or in a back-up, whether a server, disc or tape, may be regarded as being held by a public authority for the purposes of the FOIA depending on the particular circumstances of the individual case. (Our position on this issue has been modified in the light of the Information Tribunal decision in *Mr P Harper v The Information Commissioner EA/2005/0001*).

So you need to consider how you can keep track of information held in this way and whether there are practical steps you can take to recover it. Information that has been deleted or sent to a back-up server is not likely to be readily retrievable for business purposes and retrieving it may not be a practical option. However, you need to consider what information in deleted files is still held and what information is held in back-ups and what steps you would need to take to retrieve it.

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#### **4 What are my obligations if I receive a request for information that is due to be destroyed?**

If the information is contained within a record that is, as a result of retention and destruction policies, due to be destroyed within 20 days of receiving the request, you do not have to release the information. However, as a matter of good practice, it is worth considering delaying destruction until you have disclosed the information or, if not disclosed, until the complaint and appeal provisions of the FOIA are exhausted.

If you cannot delay the destruction, under the duty to offer advice and assistance you should identify whether another authority holds the information and inform the applicant of this. Or, offer to provide similar or related information if this is appropriate.

#### **5 How does the Act apply to records held in remote storage or by organisations with more than one site?**

All recorded information held by a public authority is subject to the FOIA. No distinction is made between information held by an authority in its head office, in other locations, or on its behalf by an off-site storage firm. This means that the procedures and policies on location and retrieval of information will apply in the same way. Authorities that operate from several locations or have remote storage facilities should apply records management policies consistently throughout the organisation, even if they employ private storage companies. Good communication is essential to achieve this.

Similar procedures should also be in place between the authority and its information systems provider for information kept electronically that is not easily accessible directly by staff of the authority.

#### **6 Should environmental information be managed any differently?**

The Environmental Information Regulations and the FOIA are both access to information regimes, with similar provisions relating to the procedures for dealing with requests. The same principles and policies relating to records management under the FOIA will apply to environmental information. Following the code of practice will help you comply with the Environmental Information Regulations in the same way as they will help you comply with the FOIA.

#### **7 How does the Data Protection Act affect records management?**

The Data Protection Act relates to personal information, whereas the Freedom of Information Act relates to all other recorded information that public authorities

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hold. As long as you have clearly identified the personal information, these data protection principles do not apply to the other information that you hold. However, good records management is likely to help comply with the data protection principles, including the requirements that personal data is:

- adequate, relevant and not excessive for the purposes for which it is held;
- accurate; and
- kept for no longer than is necessary for the purpose for which it is held.

## **D The Records Management Code - Part II**

### **1 What is a Public Record office?**

Part II of the code refers to the review and transfer of public records to the appropriate Public Record office. This is a depository, set up to receive, archive and retain public records when they are no longer useful to the organisation which created or held them.

### **2 What is a public record?**

Generally, public records are administrative and departmental records created by bodies covered by the Public Records Act.

### **3 What is a public record body? Who are they?**

A public record body is an organisation required by the Public Records Act to transfer public records to the National Archives thirty years after their creation. Broadly speaking, public record bodies are central government departments, non-departmental public bodies, the courts, the armed services and the National Health Service.

### **4 Are there any public record bodies not covered by the FOIA?**

Yes. For example, the security and intelligence services and privatised utilities that hold public records from the pre-privatisation period. This means that these records will only become subject to the FOIA when they are transferred to a public record office.

### **5 What is a historical record?**

Under the FOI Act, a record becomes a historical record thirty years after it is created. Under the Public Records Act 1958, when a record becomes historical, it must, in most cases, be transferred to a public record office.

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## **6 How has the FOIA affected the 30-year rule?**

The standard 30-year period for public records ended when the FOIA came into force in January 2005. In practice, this means that when records are transferred they will be considered open unless they contain information that is covered by an exemption under the FOIA. Similarly, with regard to existing records that were either subject to the 30-year rule or an extended period of time, information in them can only be withheld if an exemption under the FOIA applies. Once a record is 30 years old the FOIA restricts the number of exemptions that can be applied.

## **7 We should close files after five years and if we need to put more information on it, we should open another. In these cases, when does that record become historical?**

In these cases, the record becomes a historical record 30 years after the final document is created. This means the entire record is considered to be 'created' at the point at which the final document is added.

## **8 What is the Advisory Council on National Records and Archives**

The Advisory Council is appointed to advise the Lord Chancellor on certain aspects of the Public Records Act. One matter they advise on is how the FOI Act applies to historical public records.

## **9 Do electronic records have to be transferred to a public records office?**

Yes. All electronic records which constitute departmental records are transferred to a public records office after 30 years, as set out in the Public Records Act 1958 and Part II of the code.

## **10 If you hold records on behalf of the National Archives, what are your obligations?**

This is likely to happen where records are transferred to places other than a public record office, such as local authorities, museums and galleries. In these circumstances, you would have to act as if you were a public record office. You would be responsible for dealing with requests made under the FOIA. You should consult the authority the information came from if it attached restrictions to its disclosure. This is to assess whether an exemption applies and, if it is a public interest exemption, to allow the other authority to determine whether or not the information should be released.

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## **E FAQs specific to Northern Ireland**

### **1 How does the FOI Act affect the 20-year transfer rule?**

Northern Ireland public records are required to be transferred to PRONI when they are 20 years old (unlike Great Britain where the requirement is 30 years). The FOIA does not affect this, although the record will not be considered historical under the FOIA until 30 years after it was created. That is the point at which certain exemptions under the Act no longer apply.

### **2 How does Northern Ireland public record legislation differ?**

The Public Records Act (Northern Ireland) 1923 covers a wider range of organisations than the equivalent legislation in Great Britain. As well as government departments, non-departmental public bodies and the NHS, it extends to all the institutions of local government.

### **3 What is the Northern Ireland equivalent of the Advisory Council?**

This is the Sensitivity Review Group. Essentially, it fulfils the same role as the Advisory Council. However, it has no statutory basis, is staffed by civil servants, and reports to the appropriate Northern Ireland minister with responsibility for this area.

#### **Further advice**

If you need any more information about this or any other aspect of Freedom of Information, Environmental Information or Data Protection please contact us.

Phone: 01625 545700

E-mail: [mail@ico.gsi.gov.uk](mailto:mail@ico.gsi.gov.uk)

Website: [www.ico.gov.uk](http://www.ico.gov.uk)