

**LORD CHANCELLOR'S CODE OF PRACTICE ON
THE MANAGEMENT OF RECORDS UNDER
SECTION 46 OF THE FREEDOM OF
INFORMATION ACT 2000**

NOVEMBER 2002

Presented to Parliament by the

Lord Chancellor

Pursuant to section 46(6) of the

Freedom of Information Act 2000

CONTENTS	Page
FOREWORD	3
General	3
Authorities subject to the Public Records Acts	6
CODE OF PRACTICE	9
INTRODUCTION	9
PART I: RECORDS MANAGEMENT	10
Functional responsibility	10
Policy	10
Human resources	11
Active records management	11
Disposal arrangements	13
Management of electronic records	15
PART II: REVIEW AND TRANSFER OF PUBLIC RECORDS	17
ANNEX A STANDARDS ACCEPTED IN RECORDS MANAGEMENT	21

FOREWORD

General

- (i) This Code of Practice (hereafter referred to as 'the Code') provides guidance to all public authorities as to the practice which it would, in the opinion of the Lord Chancellor, be desirable for them to follow in connection with the discharge of their functions under the Freedom of Information Act 2000 (FOIA). The Code applies also to other bodies that are subject to the Public Records Act 1958 and the Public Records Act (NI) 1923.
- (ii) The Code fulfils the duty of the Lord Chancellor under section 46 of the FOIA.
- (iii) Any freedom of information legislation is only as good as the quality of the records to which it provides access. Such rights are of little use if reliable records are not created in the first place, if they cannot be found when needed or if the arrangements for their eventual archiving or destruction are inadequate. Consequently, all public authorities are strongly encouraged to pay heed to the guidance in the Code.
- (iv) The Code is a supplement to the provisions in the FOIA. But its adoption will help authorities to comply with their duties under that Act. It is not a substitute for legislation. Public authorities should seek legal advice as appropriate on general issues relating to the implementation of the FOIA, or its application to individual cases. The Code is complemented by the Code of Practice under section 45 of the FOIA and by Memoranda of Understanding setting out how the consultation requirements of section 66 of the FOIA will be put into effect.
- (v) The Information Commissioner will promote the observance of the Code by public authorities, acting as required by the FOIA. If it appears to the Commissioner that the practice of an authority in relation to the exercise of its functions under the FOIA does not conform with that set out in the Code, he may issue a practice recommendation under section 48 of the Act. A practice recommendation must be in writing and must specify the provisions of the Code which have not been met and the steps which should, in his opinion, be taken to promote conformity with Code.

- (vi) If the Commissioner reasonably requires any information for the purpose of determining whether the practice of a public authority in relation to the exercise of its functions under the FOIA conforms with that proposed in this Code, he may serve on the authority a notice (known as an 'information notice') under the provisions of section 51 of the Act. This requires it, within such time as is specified in the notice, to furnish the Commissioner, in such form as may be so specified, with such information relating to conformity with the Code of Practice as is so specified.
- (vii) An information notice must contain a statement that the Commissioner regards the specified information as relevant for the purpose of deciding whether the practice of the authority conforms with that proposed in the Code of Practice and of his reasons for regarding that information as relevant for that purpose. It must also contain particulars of the rights of appeal conferred by section 57 of the FOIA.
- (viii) Authorities should note that if they are failing to comply with the Code, they may also be failing to comply with the Public Records Acts 1958 and 1967, the Local Government (Records) Act 1962, the Local Government Act 1972, the Local Government (Access to Information) Act 1985 or other record-keeping or archives legislation, and they may consequently be in breach of their statutory obligations.
- (ix) The Public Records Act (NI) 1923 sets out the duties of public record bodies in Northern Ireland in respect of the records they create and requires that records should be transferred to, and preserved by, the Public Record Office of Northern Ireland.

Main features of the FOIA

- (x) The main features of the FOIA are:
 1. a general right of access to recorded information held by a wide range of bodies across the public sector, subject to certain conditions and exemptions. The right includes provisions in respect of historical records which are more than 30 years old.
 2. in relation to most exempt information, the information must nonetheless be disclosed unless the public interest in maintaining the exemption in question outweighs the public interest in disclosure.

3. a duty on every public authority to adopt and maintain a scheme which relates to the publication of information by the authority and is approved by the Information Commissioner. Authorities must publish information in accordance with their publication schemes. This scheme must specify:

a. classes of information which the public authority publishes or intends to publish;

b. the manner in which information of each class is, or is intended to be, published; and

c. whether the material is, or is intended to be, available to the public free of charge, or on payment.

4. a new office of Information Commissioner and a new Information Tribunal, with wide powers to enforce the rights created and to promote good practice;

5. a duty on the Lord Chancellor to promulgate Codes of Practice for guidance on specific issues;

6. the amendment of the public records system to integrate it with the new right of access under the FOIA.

Training

(xi) All communications in writing (including by electronic means) to a public authority fall within the scope of the FOIA, if they seek information, and must be dealt with in accordance with the provisions of the Act. It is therefore essential that everyone working in a public authority is familiar with the provisions of the FOIA, the Codes of Practice issued under its provisions, any relevant Memoranda of Understanding, and any relevant guidance on good practice issued by the Commissioner. Authorities should ensure that proper training is provided.

(xii) In planning and delivering training, authorities should be aware of other provisions affecting the disclosure of information, such as the Environmental Information Regulations 1992 and their successors which, for example, do not require requests to be in writing.

Authorities subject to the Public Records Acts

- (xiii) The guidance on records management and on the transfer of public records in the Code should be read in the context of existing legislation on record-keeping. In particular, the Public Records Act 1958 (as amended) gives duties to public record bodies in respect of the records they create. It also requires the Keeper of Public Records to supervise the discharge of those duties. Authorities that are subject to the Public Records Acts 1958 and 1967 should note that if they are failing to comply with the Code, they may also be failing to comply with those Acts.
- (xiv) The Public Records Act (NI) 1923 sets out the duties of public record bodies in Northern Ireland in respect of the records they create and requires that records should be transferred to, and preserved by, the Public Record Office of Northern Ireland.
- (xv) The Information Commissioner will promote the observance of the Code in consultation with the Keeper of Public Records when dealing with bodies which are subject to the Public Records Acts 1958 and 1967 and with the Deputy Keeper of the Records of Northern Ireland for bodies subject to the Public Records Act (NI) 1923.
- (xvi) If it appears to the Commissioner that the practice of an authority in relation to the exercise of its functions under the FOIA does not conform with that set out in the Code, he may issue a practice recommendation under Section 48 of the Act. Before issuing such a recommendation to a body subject to the Public Records Acts 1958 and 1967 or the Public Records Act (NI) 1923, the Commissioner shall consult the Keeper of Public Records or the Deputy Keeper of the Records of Northern Ireland.
- (xvii) The content of this Code has been agreed by the Deputy Keeper of Records of Northern Ireland. Part Two, in particular, describes the roles which public record bodies should perform to ensure the timely and effective review and transfer of public records to the Public Record Office or to places of deposit (as defined in Section 4 of the Public Records Act 1958) or to the Public Record Office of Northern Ireland (under the Public Records Act 1958 or the Public Records Act (NI) 1923). For the avoidance of doubt the term 'public records' includes Welsh public records as defined by Sections 116-118 of the Government of Wales Act 1998.

Role of the Lord Chancellor's Advisory Council on Public Records and of the Public Record Office

- (xviii) To advise authorities on the review of public records, the Lord Chancellor, having received the advice of his Advisory Council on Public Records, (hereafter 'the Advisory Council') may prepare and issue guidance. This may include advice on the periods of time for which the Advisory Council considers it appropriate to withhold categories of sensitive records beyond the 30 year period. In Northern Ireland similar guidance shall be issued by the Deputy Keeper of the Records of Northern Ireland following consultation with the Departments responsible for the records affected by the guidance.
- (xix) The Public Record Office will provide support as appropriate to the Advisory Council in its consideration of applications from authorities in respect of public records and in its preparation of guidance to authorities. In Northern Ireland the Public Record Office of Northern Ireland will provide similar support to the Sensitivity Review Group.

CODE OF PRACTICE

ON (1) THE MANAGEMENT OF RECORDS BY PUBLIC AUTHORITIES AND (2) THE TRANSFER AND REVIEW OF PUBLIC RECORDS UNDER THE FREEDOM OF INFORMATION ACT 2000

The Lord Chancellor, after consulting the Information Commissioner and the appropriate Northern Ireland Minister, issues the following Code of Practice pursuant to section 46 of the Freedom of Information Act.

Laid before Parliament on 20 November 2002 pursuant to section 46 (6) of the Freedom of Information Act 2000.

INTRODUCTION

1 The aims of the Code are:

(1) to set out practices which public authorities, and bodies subject to the Public Records Act 1958 and the Public Records Act (NI) 1923, should follow in relation to the creation, keeping, management and destruction of their records (Part One of the Code), and

(2) to describe the arrangements which public record bodies should follow in reviewing public records and transferring them to the Public Record Office or to places of deposit or to the Public Record Office of Northern Ireland (Part Two of the Code).

2 This Code refers to records in all technical or physical formats.

3 Part One of the Code provides a framework for the management of records of public authorities and of bodies subject to the Public Records Act 1958 and the Public Records Act (NI) 1923, and Part Two deals with the review and transfer of public records. More detailed guidance on both themes may be obtained from published standards. Those which support the objectives of this Code most directly are listed at Annex A.

4 Words and expressions used in this Code have the same meaning as the same words and expressions used in the FOIA.

PART ONE: RECORDS MANAGEMENT

5 Functional Responsibility

- 5.1 The records management function should be recognised as a specific corporate programme within an authority and should receive the necessary levels of organisational support to ensure effectiveness. It should bring together responsibilities for records in all formats, including electronic records, throughout their life cycle, from planning and creation through to ultimate disposal. It should have clearly defined responsibilities and objectives, and the resources to achieve them. It is desirable that the person, or persons, responsible for the records management function should also have either direct responsibility or an organisational connection with the person or persons responsible for freedom of information, data protection and other information management issues.

6 Policy

- 6.1 An authority should have in place an overall policy statement, endorsed by top management and made readily available to staff at all levels of the organisation, on how it manages its records, including electronic records.
- 6.2 This policy statement should provide a mandate for the performance of all records and information management functions. In particular, it should set out an authority's commitment to create, keep and manage records which document its principal activities. The policy should also outline the role of records management and its relationship to the authority's overall strategy; define roles and responsibilities including the responsibility of individuals to document their actions and decisions in the authority's records, and to dispose of records; provide a framework for supporting standards, procedures and guidelines; and indicate the way in which compliance with the policy and its supporting standards, procedures and guidelines will be monitored.
- 6.3 The policy statement should be reviewed at regular intervals (at least once every three years) and, if appropriate, amended to maintain its relevance.

7 Human Resources

- 7.1 A designated member of staff of appropriate seniority should have lead responsibility for records management within the authority. This lead role should be formally acknowledged and made known throughout the authority.
- 7.2 Staff responsible for records management should have the appropriate skills and knowledge needed to achieve the aims of the records management programme. Responsibility for all aspects of record keeping should be specifically defined and incorporated in the role descriptions or similar documents.
- 7.3 Human resource policies and practices in organisations should address the need to recruit and retain good quality staff and should accordingly support the records management function in the following areas:
- the provision of appropriate resources to enable the records management function to be maintained across all of its activities;
 - the establishment and maintenance of a scheme, such as a competency framework, to identify the knowledge, skills and corporate competencies required in records and information management;
 - the regular review of selection criteria for posts with records management duties to ensure currency and compliance with best practice;
 - the regular analysis of training needs;
 - the establishment of a professional development programme for staff with records management duties;
 - the inclusion in induction training programmes for all new staff of an awareness of records issues and practices.

8. Active Records Management

Record Creation

- 8.1 Each operational/business unit of an authority should have in place an adequate system for documenting its activities. This system should take into account the legislative and regulatory environments in which the authority works.

- 8.2 Records of a business activity should be complete and accurate enough to allow employees and their successors to undertake appropriate actions in the context of their responsibilities, to
- facilitate an audit or examination of the business by anyone so authorised,
 - protect the legal and other rights of the authority, its clients and any other person affected by its actions, and
 - provide authenticity of the records so that the evidence derived from them is shown to be credible and authoritative.
- 8.3 Records created by the authority should be arranged in a record keeping system that will enable the authority to obtain the maximum benefit from the quick and easy retrieval of information.

Record Keeping

- 8.4 Installing and maintaining an effective records management programme depends on knowledge of what records are held, in what form they are made accessible, and their relationship to organisational functions. An information survey or record audit will meet this requirement, help to promote control over the records, and provide valuable data for developing records appraisal and disposal procedures.
- 8.5 Paper and electronic record keeping systems should contain metadata (descriptive and technical documentation) to enable the system and the records to be understood and to be operated efficiently, and to provide an administrative context for effective management of the records.
- 8.6 The record-keeping system, whether paper or electronic, should include a set of rules for referencing, titling, indexing and, if appropriate, security marking of records. These should be easily understood and should enable the efficient retrieval of information.

Record Maintenance

- 8.7 The movement and location of records should be controlled to ensure that a record can be easily retrieved at any time, that any outstanding issues can be dealt with, and that there is an auditable trail of record transactions.

8.8 Storage accommodation for current records should be clean and tidy, and it should prevent damage to the records. Equipment used for current records should provide storage which is safe from unauthorised access and which meets fire regulations, but which allows maximum accessibility to the information commensurate with its frequency of use. When records are no longer required for the conduct of current business, their placement in a designated records centre rather than in offices may be a more economical and efficient way to store them. Procedures for handling records should take full account of the need to preserve important information.

8.9 A contingency or business recovery plan should be in place to provide protection for records which are vital to the continued functioning of the authority.

9 **Disposal Arrangements**

9.1 It is particularly important under FOI that the disposal of records - which is here defined as the point in their lifecycle when they are either transferred to an archives or destroyed - is undertaken in accordance with clearly established policies which have been formally adopted by authorities and which are enforced by properly authorised staff.

Record Closure

9.2 Records should be closed as soon as they have ceased to be of active use other than for reference purposes. As a general rule, files should be closed after five years and, if action continues, a further file should be opened. An indication that a file of paper records or folder of electronic records has been closed should be shown on the record itself as well as noted in the index or database of the files/folders. Wherever possible, information on the intended disposal of electronic records should be included in the metadata when the record is created.

9.3 The storage of closed records awaiting disposal should follow accepted standards relating to environment, security and physical organisation.

Appraisal Planning and Documentation

- 9.4 In order to make their disposal policies work effectively and for those to which the FOIA applies to provide the information required under FOI legislation, authorities need to have in place systems for managing appraisal and for recording the disposal decisions made. An assessment of the volume and nature of records due for disposal, the time taken to appraise records, and the risks associated with destruction or delay in appraisal will provide information to support an authority's resource planning and workflow arrangements.
- 9.5 An appraisal documentation system will ensure consistency in records appraisal and disposal. It should show what records are designated for destruction, the authority under which they are to be destroyed and when they are to be destroyed. It should also provide background information on the records, such as legislative provisions, functional context and physical arrangement. This information will provide valuable data for placing records selected for preservation into context and will enable future records managers to provide evidence of the operation of their selection policies.

Record Selection

- 9.6 Each authority should maintain a selection policy which states in broad terms the functions from which records are likely to be selected for permanent preservation and the periods for which other records should be retained. The policy should be supported by or linked to disposal schedules which should cover all records created, including electronic records. Schedules should be arranged on the basis of series or collection and should indicate the appropriate disposal action for all records (e.g. review after x years; destroy after y years).
- 9.7 Records selected for permanent preservation and no longer in regular use by the authority should be transferred as soon as possible to an archival institution that has adequate storage and public access facilities (see Part Two of this Code for arrangements for bodies subject to the Public Records Acts).
- 9.8 Records not selected for permanent preservation and which have reached the end of their administrative life should be destroyed in as secure a manner as is necessary for the level of confidentiality or security markings they bear. A record of the destruction of records, showing their reference, description and date of destruction should be maintained and preserved by the records manager. Disposal schedules would constitute the basis of such a record.

9.9 If a record due for destruction is known to be the subject of a request for information, destruction should be delayed until disclosure has taken place or, if the authority has decided not to disclose the information, until the complaint and appeal provisions of the FOIA have been exhausted.

10 Management of Electronic Records

10.1 The principal issues for the management of electronic records are the same as those for the management of any record. They include, for example the creation of authentic records, the tracking of records and disposal arrangements. However, the means by which these issues are addressed in the electronic environment will be different.

10.2 Effective electronic record keeping requires:

- a clear understanding of the nature of electronic records;
- the creation of records and metadata necessary to document business processes: this should be part of the systems which hold the records;
- the maintenance of a structure of folders to reflect logical groupings of records;
- the secure maintenance of the integrity of electronic records;
- the accessibility and use of electronic records for as long as required (which may include their migration across systems);
- the application of appropriate disposal procedures, including procedures for archiving; and
- the ability to cross reference electronic records to their paper counterparts in a mixed environment.

10.3 Generic requirements for electronic record management systems are set out in the 1999 Public Record Office statement *Functional Requirements and Testing of Electronic Records Management Systems*. (see: <http://www.pro.gov.uk/recordsmanagement/eros/invest/default.htm>). Authorities are encouraged to use these, and any subsequent versions, as a model when developing their specifications for such systems.

10.4 Audit trails should be provided for all electronic information and documents. They should be kept securely and should be available for inspection by authorised personnel. The BSI document *Principles of Good Practice for Information Management (PD0010)* recommends audits at predetermined intervals for particular aspects of electronic records management.

10.5 Authorities should seek to conform to the provisions of BSI DISC PD0008 - *A Code of Practice for Legal Admissibility and Evidential Weight of Information Stored Electronically* (2nd edn) - especially for those records likely to be required as evidence.

PART TWO: REVIEW AND TRANSFER OF PUBLIC RECORDS

- 11.1 This part of the Code relates to the arrangements which authorities should follow to ensure the timely and effective review and transfer of public records. Accordingly, it is relevant only to authorities which are subject to the Public Records Acts 1958 and 1967 or to the Public Records Act (NI) 1923. The general purpose of this part of the Code is to facilitate the performance by the Public Record Office, the Public Record Office of Northern Ireland and other public authorities of their functions under the Freedom of Information Act.
- 11.2 Under the Public Records Acts, records selected for preservation may be transferred either to the Public Record Office or to places of deposit appointed by the Lord Chancellor. This Code applies to all such transfers. For guidance on which records may be transferred to which institution, and on the disposition of UK public records relating to Northern Ireland, see the Public Record Office *Acquisition Policy* (1998) and the Public Record Office *Disposition Policy* (2000).
- 11.3 In reviewing records for public release, authorities should ensure that public records become available to the public at the earliest possible time in accordance with the FOIA.
- 11.4 Authorities which have created or are otherwise responsible for public records should ensure that they operate effective arrangements to determine
- a) which records should be selected for permanent preservation;
 - and
 - b) which records should be released to the public.
- These arrangements should be established and operated under the supervision of the Public Record Office or, in Northern Ireland, in conjunction with the Public Record Office of Northern Ireland. The objectives and arrangements for the review of records for release are described in greater detail below.
- 11.5 In carrying out their review of records for release to the public, authorities should observe the following points:
- 11.5.1 transfer to the Public Record Office must take place by the time the records are 30 years old, unless the Lord Chancellor gives authorisation for them to be retained for a longer period of time (see section 3 (4) of the Public Records Act 1958). By agreement with the Public Record Office, transfer and release may take place before 30 years;

11.5.2 review - for selection and release - should therefore take place before the records in question are 30 years old.

11.5.3 in Northern Ireland transfer under the Public Records Act (NI) 1923 to the Public Record Office of Northern Ireland is normally at 20 years.

- 11.6 In the case of records to be transferred to the Public Record Office or to a place of deposit appointed under section 4 of the Public Records Act 1958, or to the Public Record Office of Northern Ireland, the purpose of the review of records for release to the public is to:
- consider which information must be available to the public on transfer because no exemptions under the FOIA apply
 - consider which information must be available to the public at 30 years because relevant exemptions in the FOIA have ceased to apply;
 - consider whether the information must be released in the public interest, notwithstanding the application of an exemption under the FOIA; and
 - consider which information merits continued protection in accordance with the provisions of the FOIA.
- 11.7 If the review results in the identification of specified information which the authorities consider ought not to be released under the terms of the FOIA, the authorities should prepare a schedule identifying this information precisely, citing the relevant exemption(s), explaining why the information may not be released and identifying a date at which either release would be appropriate or a date at which the case for release should be reconsidered. Where the information is environmental information to which the exemption at Section 39 of the FOIA applies, the schedule should cite the appropriate exception in the Environmental Information Regulations. This schedule must be submitted to the Public Record Office or, in Northern Ireland, to the Public Record Office of Northern Ireland prior to transfer which must be before the records containing the information are 30 years old (in the case of the Public Record Office) or 20 years old (in the case of the Public Record Office of Northern Ireland). Authorities should consider whether parts of records might be released if the sensitive information were blanked out.

11.8 In the first instance, the schedule described in 11.7 is to be submitted to the Public Record Office for review and advice. The case in favour of withholding the records for a period longer than 30 years is then considered by the Advisory Council. The Advisory Council may respond as follows:

- a) by accepting that the information may be withheld for longer than 30 years and earmarking the records for release or re-review at the date identified by the authority;
- b) by accepting that the information may be withheld for longer than 30 years but asking the authority to reconsider the later date designated for release or re-review;
- c) by questioning the basis on which it is deemed that the information may be withheld for longer than 30 years and asking the authority to reconsider the case;
- d) by advising the Lord Chancellor if it is not satisfied with the responses it receives from authorities on particular cases;
- e) by taking such other action as it deems appropriate within its role as defined in the Public Records Act.

In Northern Ireland there are separate administrative arrangements requiring that schedules are submitted to a Sensitivity Review Group consisting of representatives of different departments. The Sensitivity Review Group has the role of advising public authorities as to the appropriateness or otherwise of releasing records.

11.9 For the avoidance of doubt, none of the actions described in this Code affects the statutory rights of access established under the FOIA. Requests for information in public records transferred to the Public Record Office or to a place of deposit appointed under section 4 of the Public Records Act 1958 or to the Public Record Office of Northern Ireland will be dealt with on a case by case basis in accordance with the provisions of the FOIA.

11.10 Where records are transferred to the Public Record Office or a place of deposit before they are 30 years old, they should be designated by the transferring department or agency for immediate release unless an exemption applies: there will be no formal review of these designations.

- 11.11 When an exemption has ceased to apply under section 63 of the FOIA the records will become automatically available to members of the public on the day specified in the finalised schedule (i.e. the schedule after it has been reviewed by the Advisory Council). In other cases, if the authority concerned wishes further to extend the period during which the information is to be withheld in accordance with the FOIA, it should submit a further schedule explaining the sensitivity of the information. This is to be done before the expiry of the period stated in the earlier schedule. The Public Record Office and Advisory Council will then review the schedule in accordance with the process described in paragraph 11.8 above. In Northern Ireland, Ministerial approval is required for any further extension of the stated period.
- 11.12 In reviewing records an authority may identify those which are appropriate for retention within the department, after they are 30 years old, under section 3(4) of the Public Records Act 1958. Applications must be submitted to the Public Record Office for review and advice. The case in favour of retention beyond the 30 year period will then be considered by the Advisory Council. The Advisory Council will consider the case for retaining individual records unless there is already in place a standing authorisation by the Lord Chancellor for the retention of a whole category of records. It will consider such applications on the basis of the guidance in chapter 9 of the White Paper *Open Government* (Cm 2290, 1993) or subsequent revisions of government policy on retention.

ANNEX A

STANDARDS ACCEPTED IN RECORDS MANAGEMENT

British Standards (BSI)

BS 4783 Storage, transportation and maintenance of media for use in data processing and information storage

BS 7799 Code of practice for information security management

BS ISO 15489-1 Information and Documentation - Records Management - Part 1: General

BSI DISC PD 0008 Code of practice for legal admissibility and evidential weight of information stored on electronic document management systems

BSI DISC PD0010 Principles of good practice for information management

BSI DISC PD0012 Guide to the practical implications of the Data Protection Act 1998

Public Record Office standards for the management of public records

The Public Record Office publishes standards, guidance and toolkits on the management of public records, in whatever format, covering their entire life cycle. They are available on the Public Record Office website (<http://www.pro.gov.uk/recordsmanagement>).