

20.12.2022	The National Archives, Kew, Richmond, Surrey TW9 4DU	THE
From Jeff James		NATIONAL
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Dear Departmental Record Officers and Heads of Knowledge and Information Management

In the light of the recent judgment of Sir Geoffrey Vos, Master of the Rolls, Lord Justice Dingemans and Lady Justice Elizabeth Laing in the Court of Appeal (Civil Division) on 1 December 2022 (Appeal Case reference [CA/2022/001011](#)), it is prudent and timely to clarify my view, as Keeper of Public Records, of some important issues for the preservation of the historical record of government. Prior to doing that, I am reiterating a contextual point of definition:

Recorded information of a Department's official business, *wherever held*, is a public record belonging to the Crown. It follows that if held outside a Department's infrastructure, it is held *on behalf of* the Crown.

Given the Court's determination that section 3(1) of the Public Records Act 1958 [PRA] imposes a duty to make arrangements for the historical record but stops short of imposing a legal duty to retain records prior to their selection for transfer to The National Archives, I wish to clarify at this point the steps I consider are practically required for such arrangements to be effective and I do so as **guidance issued under PRA s.3(2)**.

In practice, it is necessary for departmental policies and criteria to be in place and observed to ensure that all records, including those in non-corporate communication channels, are brought within departmental records management governance. This will allow public records to be retained as long as required for departments' appraisal decisions to be applied under the proper governance of their internal criteria and policies, including departmental retention policies, and The National Archives' Records Collection Policy [RCP]. The consequence of not taking these steps, in my view, risks outcomes which may frustrate of the purpose of the Public Records Act.

Criteria may develop over time and I use the word "appraisal" to denote any approved method of calculating value as a basis for retention decisions, for example under the RCP. I am aware that there are cross-governmental approaches being developed by the Central Digital and Data Office in the Cabinet Office. I also acknowledge the necessity of eliminating ephemeral material. The key point is not that everything needs to be retained, but rather that retention must be subject to information governance procedures designed to comply with this guidance and other requirements such as those emanating from a Department's own policies and the Code of Practice issued by the Secretary of State under section 46 of the Freedom of Information Act 2000.

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For many Departments, this will validate existing practice. Departments which are in any doubt may wish to review their policies and procedures and where necessary contact relevant officials in our Government Services, Strategy and Engagement Team.

My officials will identify a suitable opportunity(ies) to reflect these points across The National Archives' guidance, likely including the Records Collection Policy.

Yours sincerely,



Jeff James
Chief Executive and Keeper

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