

Access at transfer – Sensitivity Review Overview

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Why Sensitivity review?¹

Government departments preparing records for transfer to The National Archives should review the access of those records. The purpose of this review is to identify material that:

- should be retained under section 3(4) of the [Public Records Act](#), as the records cannot be transferred to The National Archives. This can be because the records are too sensitive for transfer following on from their classification. Retention requires the agreement of the Advisory Council on National Records and Archives (the Advisory Council) and the approval of the Secretary of State for Digital, Culture, Media and Sport
- should be transferred to The National Archives as closed, as Freedom of Information (FOI) exemptions apply. This may be in full, or in part. Closed records are transferred to TNA but remain closed for a defined number of years. Closure is because one or more FOI exemptions apply to all or part of the information in a record. This requires the **agreement** of the Advisory Council and the record will appear on a FOI exemption schedule
- can be transferred to The National Archives as open, as no FOI exemptions apply. Records will be shown on Discovery, TNA's online catalogue, as 'open document/open description' (closure status), and 'Open on transfer' (access conditions). They will be available for ordering by members of the public

This ensures that material is held correctly according to its security classification and records are made available to the public as soon as possible in accordance with the [Freedom of Information Act](#).

When can a department retain records?²

Provision for retention of historical records (those over 20 years old) in departments is made under section 3(4) of the [Public Records Act](#), which allows the retention of records for 'any other special reason'. This provision is most commonly used for national security and defence records which keep a classification. However, retention can also apply to records still required for administrative purposes. For example records could still be in use by a department and not available for transfer, or individual records could still be going through the process for transfer and not ready, ie sensitivity review is still ongoing with a third party being consulted.

The retention criteria are detailed in the [Access to Public Records Guidance on Retention](#).

In some instances approval has been given for the retention of large categories of records of a similar character, known as '**blanket retentions**'. The most common is the

¹ Paragraphs 3.2.7-3.2.10, [Code of Practice on the management of records issued under section 46 of the Freedom of Information Act 2000](#)

² <http://www.nationalarchives.gov.uk/documents/information-management/retention.pdf>

[Security and Intelligence Instrument](#) (LCI 106). Under this the Lord Chancellor³ gave permission, in advance, for all security and intelligence records to be retained.

The approval of the Secretary of State and the Advisory Council is only required for historical (those over 20 years) public records. Younger records may be **temporarily retained**, usually for up to a period of one year if the department is still consulting over the sensitivity of a record, or is awaiting approval of an FOI schedule.

Records from non-Public Record bodies do not require the agreement of the Advisory Council or the approval of the Secretary of State, and are **retained by department**.

Retained records are still subject to Freedom of Information Act provisions, although requests to access the documents need to be made to the relevant department holding the records and not The National Archives.

When can a department close records?⁴

When reviewing records for access identifying which records require closure on transfer, departments should identify which FOI exemption/s apply, explain why the information contained in the records falls under these exemptions and determine how long it should be closed for.

Closure periods should be for a defined period of time, as sensitivity reduces over time, from the end date of the record. Where it is not possible to identify a specific time at which records can be opened, a date should be set when the record should be re-reviewed by the department to decide if continued closure is required. Common closure periods are 'lifetime' for those relating to individuals, or rolling periods of ten years for re-review. Further details of these closure periods and how to calculate them are provided in the [Closure Periods Guidance](#).

All records held by TNA closed will be shown on Discovery. This includes both whole pieces and items – created when extracts have been made from a piece. **Redaction** is the process of removing exempt information from a record. It can be the removal of words, paragraphs or whole pages or documents.

Closure should be consistent with the FOI Act and other relevant legislation. Information that a department would provide if it received an FOI request should not be closed on transfer. Access conditions should also be consistent with similar information in other transferred records or created by different departments.

The Advisory Council's remit is only for historical public records. Closure of records from non-Public Record bodies, or for the closure of records up to the 20 year point (when they become historical) are included in a **Non-Advisory Council FOI schedule**. This is created and the applications quality assured in the same manner as applications going forward to the Advisory Council, but is signed off by one of The National Archives' Directors. Non-Advisory Council schedules also include entries where closures periods, exemptions or the amount of information covered are being reduced. This is usually as a result of FOI requests for records held by TNA.

³ Until 2015, the parent body of The National Archives was the Ministry of Justice and its predecessors, and the Lord Chancellor was identified under s3(4) of the Public Records Act

⁴ <http://www.nationalarchives.gov.uk/documents/information-management/principles-for-determining-the-access-status-of-records-on-transfer.pdf>

Before this closure period expires, records should be re-reviewed to assess their sensitivity, and whether they can be made available to the public. If there are multiple reasons for closure then all should be identified. Large numbers of records should not be closed if only a few actually contain sensitive information.

What should departments ensure they have considered as part of the sensitivity review process?

When sensitivity reviewing records departments should ensure they have carried out:

1) Consultation⁵

Those undertaking the review should ensure that adequate consultation takes place, both within the department and with other departments that might be affected by the sensitivity review decision – for example, the departments that originally supplied the information, or who are the subject matter experts.

2) Redaction

Departments should consider whether parts of records might be released if the sensitive information was redacted (rendered invisible or blanked out). Time spent on redaction should be proportionate to a record's historical value and the resources available.

Guidance on physical redaction is available in the [Redaction toolkit](#).

What is the process for applying to close or retain records?

Applications for the closure and retention of historical public records are **considered by** the [Advisory Council on National Records and Archives⁶](#). Only on their agreement can records be transferred as closed, or go forward to the Secretary of State for approval to be retained.

Applications should be submitted to The National Archives for review and advice prior to transfer, and a schedule of all departments' applications will be considered by the Advisory Council. The Advisory Council may respond as follows:

- accepting that the information may be withheld and earmarking the records for release or re-review at the date identified
- accepting that the information may be withheld but asking the department to reconsider the date designated for release or re-review, or the exemptions
- questioning the basis on which it is considered that the information may be withheld and asking the department to reconsider.

If the Advisory Council accepts that the information should be withheld, the records can be transferred as closed (in whole or in part as appropriate) and the relevant closure period applied. The National Archives will circulate finalised schedules.

⁵ Paragraph 3.2.8 – Code of Practice

⁶ Paragraph 3.2.10 – Code of Practice

Therefore, once closures are approved records can be transferred.

Retention applications go with the Advisory Council's recommendation to the Secretary of State for Digital, Culture, Media and Sport. Only once the Secretary of State has signed the Instrument will retention be approved.

What happens after transfer?⁷

Access at transfer does not affect statutory rights of access. Requests for closed information in public records transferred to The National Archives will be dealt with on a case by case basis in accordance with the provisions of the FOI Act, including consultation with the transferring department.

When exemptions have ceased to apply, records will become available to the public at the date specified in the finalised schedule. If the department concerned wishes to extend the period during which the information is to be withheld, it should submit a further application before the expiry.

What legislation aside from the Public Records Act 1958 might affect access?

Access to Public Records is governed by both the Public Records Act 1958 and the Freedom of Information Act 2000.

Both were amended by the [Constitutional Reform and Governance Act 2010](#). This amended the 30 year 'transfer rule' in the Public Records Act 1958 at Section 3(4), to 20 years. There is an incremental transition in place for the ten years from 2013⁸. The duration of some FOI exemptions was correspondingly revised at the same time (FOI Act – section 63).

[Freedom of Information Act 2000](#) – This legislation amended access to public records removing much of section 5 of the Public Records Act 1958. It replaced the 30 year 'access rule' with open access at transfer, unless a record has been closed or retained.

All closures are against the exemptions listed in the [Freedom of Information Act 2000](#). Under FOI there is a presumption of openness, unless an exemption applies. However, some exemptions refer out to other legislation.

Section 40 refers to the [Data Protection Act 2018](#) and General Data Protection Regulations – This legislation ensures the proper use of personal information about living individuals, by imposing obligations on those who hold such personal information and giving rights to those the information is about – data subjects.

Section 39 refers to the [Environmental Information Regulations 2004](#) – This legislation governs access to environmental information. Refusal is under exceptions, many of which mirror the FOI Act exemptions.

⁷ Paragraph 3.3.1 – Code of Practice; [Procedures for closure on transfer](#)

⁸ The Public Records (Transfer to the Public Record Office) (Transitional and Saving Provisions) Order 2012- <http://www.legislation.gov.uk/uksi/2012/3028/contents/made>

Section 44 refers to **Statute Bars** – there may be more specific legislation that governs access to a department's records, or the type of information held.