

Memorandum of Understanding between the Information Commissioner and the Chief Executive of The National Archives

1 Introduction

1.1 This Memorandum of Understanding (MoU) establishes a framework for co-operation between the Information Commissioner's Office (ICO) and The National Archives (TNA). It sets out the role of each organisation and explains how they will work together to achieve their separate and common goals.

1.2 Its aims are to:

- Generally facilitate contact and discussion on matters of common interest, particularly by sharing knowledge, information, expertise and best practice
- Set out the basis on which the organisations will co-operate in respect of complaints relating to the re-use of information held by public sector bodies
- Provide a framework for co-ordination of audit and assessment work

1.3 The MoU is published on both organisations' websites. It will be reviewed at least every two years and more frequently if required by developments in the statutory and policy environment.

1.4 The MoU is supported by documents such as Service Level Agreements (SLAs) setting out detailed commitments.

1.5 Neither the MoU nor the supporting documents are intended to be legally binding.

2 Overview of the ICO's role and responsibilities¹

2.1 The ICO is responsible for regulating compliance by public authorities with the rights of access provided by the Freedom of Information Act 2000 (FOIA), the Environmental Information Regulations 2004 (EIR) and the INSPIRE Regulations 2009. The ICO also regulates compliance with the Data Protection Act 1998 (DPA) and the Privacy and Electronic Communications (EC Directive) Regulations 2003 (PECR).

2.2 The ICO's regulatory duties include considering complaints under the legislation. Its powers include the issuing of various notices in relation to FOIA and EIR complaints. These include decision notices, which give the outcome

¹ This overview focuses on the ICO's role and responsibilities as they bear on the MoU. It will be amended if statutory responsibilities are changed by future legislation. Technically the responsibilities fall on the Information Commissioner but for convenience they are associated with his office, i.e. the ICO, in this MoU.

of a complaint and specify the steps that must be taken in relation to the case; information notices, which specify information to be provided by the public authority; and enforcement notices, which specify action to be taken by the public authority to achieve compliance with the FOIA or EIR. The powers of the ICO under the DPA include issuing enforcement notices and imposing Civil Monetary Penalties.

2.3 The ICO is responsible also for promoting good practice with this legislation. In particular, the ICO promotes observance of the codes of practice under sections 45 and 46 of the FOIA² and may, with the consent of an authority, assess whether good practice is being followed.³ The ICO can issue an information notice to obtain information relating to conformity⁴ and a practice recommendation specifying remedial steps that should be taken.⁵ A practice recommendation cannot be enforced. The DPA gives the ICO the power to issue assessment notices and to conduct compulsory audits of data protection practices in government departments as well as consensual audits of other bodies.

2.4 The Commissioner is required to consult the Chief Executive of TNA in his capacity of Keeper of Public Records about the promotion of observance of the records management code of practice⁶ by bodies subject to the Public Records Act 1958. He is also required to consult him before issuing a practice recommendation to one of those bodies.⁷

2.5 The ICO is responsible for regulating certain aspects of the INSPIRE Regulations. This role is intended to mirror certain aspects of its regulatory responsibilities under FOIA and the EIR. These responsibilities do not extend to complaints relating to the re-use of information that fall within the scope of the Re-use of Public Sector Information Regulations, including charging for re-use, which remain the responsibility of TNA.⁸ The ICO has limited responsibilities to regulate re-use when requests are made for datasets under the FOIA. The new responsibilities were introduced in amendments to the FOIA in the Protection of Freedoms Act 2012.⁹

² FOIA s 47(1)

³ FOIA s 47(3)

⁴ FOIA s 51(1)(b)(ii)

⁵ FOIA s 48(1)

⁶ This is the code of practice issued under FOIA s 46

⁷ These consultation requirements are at FOIA s 47(5)(a) and s 48(3)

⁸ The responsibility falls to the Office of Public Sector Information, which is part of The National Archives. Regulations 18-19 of the Re-use of Public Sector Information Regulations 2005 set out the complaints process.

⁹ At the time this MoU was signed these amendments had not yet been commenced.

3 Overview of TNA's role and responsibilities¹⁰

3.1 TNA comprises and carries out the functions of four bodies:

- The Public Record Office
- The Historical Manuscripts Commission
- The Office of Public Sector Information
- Her Majesty's Stationery Office

3.2 TNA is the official archive of the UK government and for England and Wales and in that capacity is responsible for safeguarding and preserving public records¹¹ in the care of the Keeper of Public Records and for doing what is necessary or expedient for maintaining the utility of the Public Record Office.¹² This includes providing public access and related services to records that are available for public access in accordance with the FOI Act.

3.3 TNA oversees the preservation of public records in 'places of deposit', i.e. other archives services appointed under the Public Records Act 1958 to hold public records.¹³ This includes promoting good practice in preservation and access services to ensure they are comparable to those of TNA, and providing advice on a range of archives issues.

3.4 TNA provides guidance, co-ordination and supervision to government departments and other bodies subject to the PRA on their management of their records¹⁴ and assesses their capability in this regard through its Information Management Assessment programme.

3.5 TNA is responsible, through the Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament under Letters Patent, for the management and licensing of Crown copyright and Crown database right. In addition, through the Controller and Queen's Printer of Acts of Parliament, TNA has responsibility for the publication of UK legislation and other official publishing records.

3.6 TNA promotes good practice in the re-use of public sector information. It oversees, implements and advises on the Re-use of Public Sector Information Regulations 2005, which set out various requirements as to how public sector bodies should deal with requests for permission to re-use their information.¹⁵ Through the Office of Public Sector Information it also runs the Information Fair Trader Scheme, which sets standards that IFTS members are required to meet as a condition of accreditation. It considers complaints

¹⁰ This overview focuses on The National Archives' role and responsibilities as they bear on the MoU. It will be amended if statutory responsibilities are changed by legislation not yet enacted and/or commenced. Technically some responsibilities fall on office holders within The National Archives but for convenience they are associated with The National Archives in this MoU

¹¹ Public records are the records of UK government departments and associated bodies, of the courts, the armed services and the NHS.

¹² Public Records Act 1958 s 2(4)

¹³ PRA s 4

¹⁴ PRA s 3(2)

¹⁵ Re-use Regulations, Regulations 8-15

from those seeking permission to re-use public sector information under both the IFTS and the Re-use Regulations and it sets out its conclusions in recommendations. These recommendations are not legally enforceable and either the applicant or the public sector body can request that they are reviewed by the Advisory Panel on Public Sector Information.¹⁶

3.7 TNA has the archive sector leadership responsibility within government in England and is involved in the making and the promulgation of policy. It engages with practitioners, managers and funders across the sector to promote service development, improvement and sustainability, promoting the archival health of the nation.

4 General co-operation

4.1 The ICO and TNA recognise that they have complementary expertise and overlapping interests. They will endeavour to co-operate and work together insofar as their separate regulatory roles permit. They will share knowledge, expertise, best practice and intelligence in relation to matters of mutual interest and, if there is overlap or a mutual interest in a policy area, they will consult as appropriate.

4.2 The organisations are committed to the principle of good communication with each other, especially when one organisation's work may have some bearing on the responsibilities of the other organisation. The organisations will seek to alert each other as soon as practicable to relevant developments and issues within their area of responsibility, subject to complying with any relevant legal requirements applying to the disclosure of information.

4.3 The Information Commissioner and the Chief Executive of TNA will meet at least once a year, and more frequently if required, to discuss matters of mutual interest and the operation of this MoU. These meetings will be underpinned by regular liaison between their officials including meetings as and when required.

4.4 The organisations will ensure that there is clarity as to the appropriate contact point for particular matters and that contact details are kept up to date.

5 Promotion of good practice

5.1 The ICO and TNA both provide web-based guidance to help public authorities understand and meet their statutory obligations. Both organisations agree to provide links to relevant guidance produced by the other organisation, and to encourage public authorities to use guidance produced by the other organisation where appropriate.

¹⁶ Re-use Regulations, Regulations 18-21

5.2 The organisations agree that when producing guidance that is relevant to the responsibilities of the other organisation they will consult the other organisation.

5.3 The organisations agree that when they receive a request for policy advice that raises issues relevant to the responsibilities of the other organisation they will consult the other organisation.

5.4 When improvements in practice are required to conform to the codes of practice under sections 45 and 46 of the FOIA, the ICO may issue a Practice Recommendation to the public authority. When the required improvements relate to records management, archives services or the re-use of public sector information, the ICO will consult TNA. The final decision as to whether a Practice Recommendation should be issued and on its contents will be taken by the ICO.

5.5 When the ICO considers a more appropriate course of action would be for the public authority to sign an Undertaking in relation to the good practice referred to paragraph 5.4, the ICO will consult TNA. The final decision as to whether an Undertaking should be sought and on its contents will be taken by the ICO.

6 Assessment of good practice

6.1 TNA and the ICO carry out a number of assessment and audit programmes which assess compliance with relevant statutory obligations, policies, standards and guidance and also highlight good practice. TNA and the ICO will co-ordinate this work as far as possible in order to avoid duplication, present a joined-up approach to government departments and other public authorities and share good practice.

6.2 TNA will share its assessments of the current levels of conformity with the records management code of practice. The ICO may refer to these assessments in the Information Commissioner's annual report to Parliament.

6.3 The principal means of monitoring conformance with the records management code of practice will be self-assessment by public authorities, using tools provided by TNA. TNA will provide support for self-assessment if the particular circumstances of the case make this appropriate, subject to the necessary resources being available.

6.4 The Information Commissioner may ask TNA to undertake on his behalf an assessment of a public authority's practice with regard to records management. As a general rule, a request for assessment will relate to areas of particular concern within that public authority. TNA will consider all such requests. The scope and type of assessment, the level of commitment involved and the timing will be agreed in relation to each request.

6.5 If, having conducted an assessment, TNA considers that a Practice Recommendation or an Undertaking is required (see paragraphs 5.4 and 5.5), the report to the ICO will include a recommendation to this effect with suggestions as to content.

6.6 If the ICO proposes to issue an Information Notice to a public authority in order to obtain more information concerning its current practice than the public authority has provided, and the information is connected to either records management or to the re-use of public sector information, the ICO will consult TNA.

6.7 If an assessment of the practice of archives services in relation to the code of practice under section 45 of the FOIA appears to the ICO to raise general issues concerning archives policy and professional practice, the ICO will consult TNA. The final decision on the appropriate course of action will be taken by the ICO.

7 Complaints handling

7.1 Both the ICO and TNA handle complaints under the legislation for which they are responsible.¹⁷ It is possible that a complaint received by one organisation will touch on the responsibilities of the other organisation. The organisations agree that they will seek advice from the other organisation and share information where appropriate and as permitted by the relevant legislation.

7.2 Both organisations agree that when assessing a complaint they will consider whether it has implications for the other organisation. If it does, but the main focus of complaint falls within the responsibilities of the organisation that received the complaint, it will continue to handle the complaint but will seek the views of the other organisation as appropriate. If the main focus of the complaint falls within the responsibilities of the other organisation, the organisation that received the complaint may, with the agreement of the other organisation, suggest to the complainant that the complaint is more relevant to the other organisation.

Information Commissioner

Chief Executive of The National Archives



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18/7/12

¹⁷ The relevant legislation is specified in sections 2-3 of this MoU