Access to Public Records

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The National Archives
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The National Archives
Kew, Richmond, Surrey, TW9 4DU

http://www.nationalarchives.gov.uk/

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Preface to first edition

On behalf of the Lord Chancellor's Advisory Council on Public Records, I welcome the publication of this manual. It is published with the endorsement of the Advisory Council, whose views on access to public records are represented here.

Access to public records is an issue which lies at the heart of the Advisory Council's work. The Public Records Act 1958 charges the Council with responsibility for advising the Lord Chancellor on matters concerning public records and at each of our meetings we devote time and attention to the question of which records should be opened to the public and which should be withheld.

The Council is keen to promote greater understanding of the policy and procedures that determine which records are released. I feel confident that this important new initiative by The National Archives will serve that purpose - and will prove to be an invaluable guide to all those involved in decisions concerning access to public records.

The Right Honourable the Lord Woolf
Chairman of the Lord Chancellor's Advisory Council on Public Records from 1996 to 2000.

Table of statutes

References in this manual to the Act, and section references where no Act is specified refer to the Public Records Act 1958.

Direct quotations from statutes or other publications are shown in *italics*

1 Introduction

1.1 Purpose of the Manual

This manual is written as a tool for use by those who need to understand the legal basis for the working of the public records system. From the moment of a record's creation, to its final archiving in The National Archives, a complex web of legislative provisions, government policy instructions and departmental practices govern how it may be treated. Each person making decisions about a record needs to know the basis of their authority and how it should be exercised:

- The Keeper of Public Records takes charge of the records in The National Archives and is under a duty to offer guidance and supervision to those responsible for selecting the records that ought to be preserved and for their safe-keeping

- Ministers of departments generating records decide whether, in their view, records should be treated other than by being opened to the public after thirty years

- The Lord Chancellor's Advisory Council advises him on all matters relating to public records, but in particular on applications to withhold records for longer than 30 years. The council is supported in its work by The National Archives

- The Lord Chancellor approves or otherwise the applications to withhold records

This manual explains the responsibilities of each, and the criteria for the choices available. The body of the manual will deal with the broad principles applying to records generally. Appendices are being added to the manual progressively to give detailed guidance on the handling of specific categories of records.

1.2 What are public records, and who is responsible for them?

Public Records are records created or received by government departments and the courts of the United Kingdom. They include the records of those non-departmental public bodies which report to ministers, but not those of bodies which are independent of the government. The Public Records Act 1958 gives a definition of public records and lists various bodies whose records are or are not public records. This definition is given in Appendix 1 of this manual, which also lists the considerations which are applied when determining whether the records of a new body are public records. The Act also gives the Lord Chancellor the power to determine whether a body's records are public records or not. Those public records of historical value are stored in The National Archives and in other approved archives (places of deposit). Scotland and Northern Ireland have their own record offices and the National Assembly for Wales has the power to establish one for Wales. There are separate legislative provisions for

archives in Scotland and Northern Ireland, but the access regime in each mirrors that established by the Public Records Act. If a record office for Wales is established, the Lord Chancellor has the power to impose arrangements analogous to those in the Public Records Act, by statutory instrument.

The Keeper of Public Records has the responsibility of co-ordinating and supervising the selection and transfer of records to The National Archives. Once records are in The National Archives, the Keeper is charged with preserving them, allowing the public to consult them, making indexes and copies, and lending them, subject to the Lord Chancellor's approval, to exhibitions. Although the Keeper takes charge of the records, departments can request the temporary return of documents transferred by them.

It is the duty of every person responsible for public records to select those worthy of permanent preservation and transfer them to The National Archives or a place of deposit approved by the Lord Chancellor. Only a small fraction of public records are selected as suitable for permanent preservation in The National Archives or in places of deposit, and the great majority of those not selected are destroyed. The National Archives' Acquisition and Disposition policies have been formulated in consultation with a broad spectrum of interest groups and are available from The National Archives.

1.3 **Legislative context**

Virtually all the law relating to public records is found in the Public Records Acts 1958 and 1967. The 1958 Act transferred responsibility for public records from the Master of the Rolls to the Lord Chancellor and established the post of Keeper of Public Records in its current form. The Act provided that the public records selected for permanent preservation were to be transferred to The National Archives or to a place of deposit, not later than thirty years after their creation. When they had been in existence for fifty years they were to be available for public inspection, unless action was taken to withhold them for longer. Before this Act was passed, many departmental records stayed in their departments much longer and arrangements for public access were variable across government.

The 1967 Act brought forward the date on which the public were normally to have access to the first of January thirty years after the date of the last record. Hence a file ending on 5 June 1967 would become open on 2 January 1998. The date of transfer was not brought forward and so the obligation to transfer records remains at thirty years. The Freedom of Information Act 2000 gives the public a right to information held by public authorities, subject to various exemptions. It amends the Public Records Act providing a new statutory framework for the regulation of access to public records. Some of the exemptions do not apply to 'historical' records, those over thirty years old. The Act's main provisions were fully implemented in January 2005.

1.4 Deposited records

The Keeper is empowered to accept records which are not public records. This is done where the Keeper is of the view that the records merit permanent preservation, and the body generating the records agrees to deposit them. An agreement is entered into between the body and The National Archives which renders this deposit similar in relation to access and copying to that by public record bodies. The organisation making the deposit must carry out the necessary selection and indexing work under the supervision of The National Archives staff. The ownership of the records and their copyright status remains unaffected by the deposit.

2 The thirty year rule

2.1 Statutory origin

The Public Records Act 1958 standardised arrangements for the transfer of records to The National Archives and specified when they should be opened to the public. The Public Records Act 1967 reduced the normal period from fifty to thirty years. The section, as amended, read:

5. - (1) Public records in the Public Record Office, other than those to which members of the public had access before their transfer to the Public Record Office, shall not be available for public inspection until the expiration of the period of thirty years beginning with the first day of January in the year next after that in which they were created or of such other period either longer or shorter, as the Lord Chancellor may, with the approval, or at the request, of the Minister or other person, if any, who appears to him to be primarily concerned, for the time being prescribe as respects any particular class of public records.

2.2 Exceptions to the thirty year norm

2.2.1 *Early Opening*

The thirty year closure period does not apply to records which have been open to the public prior to their transfer: they must remain open to the public. Section 5(1) gives the Lord Chancellor a discretion to open records, with the concurrence of the minister concerned, earlier than the specified period. Accelerated opening is considered further in Chapter 3.

2.2.2 *Extended closure and retention*

Records may be kept closed to public access longer than thirty years under s5(1) or specifically to prevent a breach of good faith (s5(2)). They may also be retained in departments beyond the thirty year period under s3(4). Retention is primarily a matter of the physical whereabouts of a record, but when retention of a record is authorised a decision will also be made as to whether access is to be permitted. Records may not be closed or retained under these sections without the concurrence

of the minister of the department concerned, and of the Lord Chancellor, who receives the views of his Advisory Council. The criteria for extended closure of records are discussed in Chapter 4 and for retention within departments in Chapter 5.

Various statutory provisions and instruments also prohibit the disclosure of certain information obtained from the public. Section 5(3) provides that these statutory provisions override the Keeper's duty to make this information available to the public. Such records are not subject to the agreement of the Lord Chancellor or scrutiny by the Advisory Council (see below 2.4).

2.2.3 ***Privileged access***

Access to records which are closed, whether by virtue of being less than thirty years old, or in accordance with an extended closure instrument, may be granted on a privileged basis. This is discussed in 4.4 below.

2.3 **Non-statutory guidance**

The government's current policy on access to public records is found in the White Paper *Open Government* (Cm2290, 1993). The approach to be used for accelerated opening, extended closure and retention are set out in the White Paper and the principles established there are discussed further in this manual.

2.4 **Lord Chancellor's Instruments**

Where the Public Records Act requires the decision of the Lord Chancellor for a variation of the normal thirty year closure period, this decision is recorded in a formal document, signed by the Lord Chancellor and known as a Lord Chancellor's Instrument. This is not a Statutory Instrument, but is a list of the documents, their date and references and the identity of the departments seeking the permission.

One of the Advisory Council's tasks is to advise the Lord Chancellor on the applications that the departments make for retention and extended closure of records. The Council and the Lord Chancellor need to be given sufficient detail about the record for it to be apparent which of the criteria for closure or retention is satisfied. Once signed by the Lord Chancellor the instrument is the authority to deal with the record accordingly. Where an instrument for extended closure has been made, and on review a department considers that the material is no longer sensitive, a further instrument is needed to change the closure period prescribed by the first. A retention instrument, on the other hand, is considered to be a permission to retain, not an obligation to do so. Thus, no further instrument is needed if the department no longer wishes to retain the record. The date until which the record is to be retained or closed is always specified in the instrument.

Applications for early opening of records are submitted, by The National Archives, directly to the Lord Chancellor. They are reported to

the Advisory Council for information only. Records which are open to the public before transfer to The National Archives remain open without the need for an instrument. There is no need for an instrument to open records after 30 years. More information about the role and powers of the Advisory Council is set out in Appendix 2.

3 Accelerated opening

3.1 Statutory basis and current policy

The power to open records before the expiry of the thirty year period is found in s5(1) of the Public Records Act, the full text of which is given at 2.1 above. There is no statutory guidance on the criteria to be adopted for accelerated opening under s5(1) and reliance is had instead on the government's stated policy on access to government information in the White Paper *Open Government* (1993, Cm2290).

If the open government criteria for release apply the record should be opened on transfer. This will necessitate the preparation of a Lord Chancellor's instrument.

3.2 The Open Government Code[1] criteria in relation to current information

The Code includes an overarching criterion for withholding information, namely that its disclosure is not in the public interest. It then proceeds to identify the types of information that it is not in the public interest to release. These are noted below.

- Defence, security and international relations

  Information whose disclosure would harm national security or the conduct of international relations

  Information received in confidence from foreign sources

- Internal discussion and advice

  Information which would harm the frankness and candour of internal discussion including:
  Cabinet and Cabinet committee proceedings
  Confidential advice and recommendations
  Analysis of alternative policy options

- Communications with the Royal Household

  Including those between the Household and ministers and the confidential proceedings of the Privy Council

[1] Open Government *Code of Practice on Access to Government Information*, Second edition (1997)

- Law enforcement and legal proceedings where prejudicial to the administration of justice, the apprehension of offenders, or public order likely to harm public safety, the environment, or endanger any person covered by professional privilege

- Immigration and nationality

- Management of the economy and collection of taxes

- Management and operation of the public service leading to improper gain or which would prejudice efficient conduct of a department

- Public employment and honours

- Material and information given in confidence

- Material subject to voluminous or vexatious requests

- Information which will soon be published

- Research statistics and analysis of incomplete research, or personal or confidential material which will be anonymised in research to be carried out

- Invasion of privacy

- Trade secrets

- Information subject to statutory restrictions

In order to justify withholding the information, the department from whom it is sought has to show under which category the information is exempt and to consider the public interest in disclosure. Where there is a harm test within the category the presumption still remains that the information should be disclosed unless the harm likely to arise from disclosure would outweigh the public interest in making the information available.

In determining the sensitivity of records transferred to The National Archives, many of the considerations which apply to current records are also relevant. However, because sensitivity generally decreases with the passage of time, the criteria may be applied more rigorously. There is no statutory or governmental guidance on which records may be opened earlier than after thirty years, so the same criteria should be applied for this purpose.

3.3 **Ombudsman decisions**

The Parliamentary Commissioner for Administration, known as the Ombudsman, adjudicates on disputes between the public and government departments in relation to disclosure of current records. The published reports of these decisions are an object lesson on how decisions relating to disclosure should be made. The type of sensitivity in the material is assessed carefully against the criteria and if one or more of these is satisfied the Ombudsman proceeds to establish, where appropriate, whether any harm would arise from disclosure.

3.4 **Freedom of information exemptions**

Exemptions to the right to information cover much of the same ground as those in the *Open Government* White Paper. There are, however, two categories: those which confer an absolute exemption and those in which the public authority seeking to rely on the exemption will have to establish that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

The Freedom of Information Act repeals virtually the whole of section of the Public Records Act. As amended this now becomes:

> *It shall be the duty of the Keeper to arrange that reasonable facilities are available to the public for inspecting and obtaining copies of public records in the Public Record Office which fall to be disclosed in accordance with the Freedom of Information Act 2000*

Thus access to public records will be provided under the Freedom of Information Act once it comes into operation. There is no amendment to the requirement that comparable arrangements are made for access to public records in approved places of deposit

Under FOI there will be a presumption of openness, irrespective of the date of the record, unless an exemption applies. Some exemptions automatically cease to apply after 30 years or some other pre-defined term. In the case of exemptions without a pre-defined cut-off date, the information will remain exempt for as long as the criteria for the exemption subsist. However, for those exemptions to which the public interest test will apply, there will be a requirement to consider whether there is, notwithstanding the exemption, a public interest in disclosure. The reason for which it is in the public interest to keep the records closed will generally diminish as time passes thus such records will eventually be released. Where a department is of the view that it is not in the public interest to release such records (of any age) which are held by The National Archives or a place of deposit, there is a requirement to consult the Lord Chancellor. This is also the case for such records which although over 30 years old (historical records) if they are retained in departments under a Lord Chancellor's instrument. Human rights legislation, see 7.4 below, establishes openness of government processes as a cornerstone of a democratic society.

The table below shows the exemptions to the rights to information, noting which are indefinite and also whether the public interest test applies.

Information Exemptions

Section	Exemption	Absolute or public interest test?	Class or prejudice test?	Duration
21	Information already accessible (through another Act or included in Publication Scheme)	Absolute	Class	Disapplied for records over 30 years old in The National Archives and PRONI
22	Information intended for future publication (whether the date is determined or not)	Public interest	'reasonableness' test	Disapplied for records over 30 years old in The National Archives or PRONI
23	Information supplied by, or relating to, bodies dealing with security matters (named)	Absolute unless in an historical record in The National Archives or PRONI	Class	Perpetual. Note that the Lord Chancellor must be consulted about a proposed refusal to disclose in the public interest information in a record in The National Archives or in a retained historical record[2]
24	National security	Public interest	Prejudice test (using different words: 'for the purpose of safeguarding national security' implies a test]	Perpetual. Note that the Lord Chancellor must be consulted about a proposed refusal to disclose in the public interest information in a public record that is over 30 years old or in a retained historical record [2]

[2] In the case of records covered by the Public Records (Northern Ireland) Act 1923, whether in PRONI or retained, the 'appropriate Northern Ireland Minister' must be consulted whenever consultation of the Lord Chancellor is specified for records in The National Archives or for records retained under section 3(4) of the Public Records Act 1958

Section	Exemption	Absolute or public interest test?	Class or prejudice test?	Duration
26	Defence	Public interest	Prejudice test	Perpetual. Note that the Lord Chancellor must be consulted about a proposed refusal to disclose in the public interest information in a public record that is over 30 years old or in a retained historical record[2]
27 (1)	International relations - prejudice	Public interest	Prejudice test	Perpetual. Note that the Lord Chancellor must be consulted about a proposed refusal to disclose in the public interest information in a public record that is over 30 years old or in a retained historical record [2]
27 (2)	International relations – information provided in confidence by other states or international organisations or courts	Public interest	Class	Perpetual. Note that the Lord Chancellor must be consulted about a proposed refusal to disclose in the public interest information in a record in The National Archives or in a retained historical record [2]

[2] In the case of records covered by the Public Records (Northern Ireland) Act 1923, whether in PRONI or retained, the 'appropriate Northern Ireland Minister' must be consulted whenever consultation of the Lord Chancellor is specified for records in The National Archives or for records retained under section 3(4) of the Public Records Act 1958

Section	Exemption	Absolute or public interest test?	Class or prejudice test?	Duration
28	Relations within the UK (between the UK government, the Scottish Administration, the National Assembly for Wales and the Executive Committee of the Northern Ireland Assembly)	Public interest	Prejudice test	30 years. Note that the Lord Chancellor must be consulted about a proposed refusal to disclose in the public interest information in a record in The National Archives [2]
29	The economy	Public interest	Prejudice test	Perpetual. Note that the Lord Chancellor must be consulted about a proposed refusal to disclose in the public interest information in a public record that is over 30 years old or in a retained historical record [2]
30(1)	Criminal investigations and proceedings conducted by the authority	Public interest	Class	30 years. Note that the Lord Chancellor must be consulted about a proposed refusal to disclose in the public interest information in a record in The National Archives [2]
30(2)	Relating to civil or criminal investigations and proceedings which use confidential sources	Public interest	Class	Perpetual. Note that the Lord Chancellor must be consulted about a proposed refusal to disclose in the public interest information in a public record in The National Archives or in a retained historical record [2]

[2] In the case of records covered by the Public Records (Northern Ireland) Act 1923, whether in PRONI or retained, the 'appropriate Northern Ireland Minister' must be consulted whenever consultation of the Lord Chancellor is specified for records in The National Archives or for records retained under section 3(4) of the Public Records Act 1958

Section	Exemption	Absolute or public interest test?	Class or prejudice test?	Duration
31	Law enforcement	Public interest	Prejudice test	100 years. Note that the Lord Chancellor must be consulted about a proposed refusal to disclose in the public interest information in a public record that is in The National Archives or in a retained historical record [2]
32	Court records etc	Absolute	Class	30 years
33	Audit functions	Public interest	Prejudice test	30 years. Note that the Lord Chancellor must be consulted about a proposed refusal to disclose in the public interest information in a record in The National Archives [2]
34	Parliamentary privilege	Absolute	Prejudice test in different words ('for the purposes of avoiding an infringement of the privileges of either House' implies a test)	Perpetual.
35 (1)(a)	Formulation of government policy	Public interest	Class	30 years. Note that the Lord Chancellor must be consulted about a proposed refusal to disclose in the public interest information in a record in The National Archives [2]

[2] In the case of records covered by the Public Records (Northern Ireland) Act 1923, whether in PRONI or retained, the 'appropriate Northern Ireland Minister' must be consulted whenever consultation of the Lord Chancellor is specified for records in The National Archives or for records retained under section 3(4) of the Public Records Act 1958

Section	Exemption	Absolute or public interest test?	Class or prejudice test?	Duration
35 (1)(b)	Ministerial communications	Public interest	Class	30 years. Note that the Lord Chancellor must be consulted about a proposed refusal to disclose in the public interest information in a record in The National Archives [2]
35 (1)(c)	Law Officers' advice	Public interest	Class	30 years Note that the Lord Chancellor must be consulted about a proposed refusal to disclose in the public interest information in a record in The National Archives [2]
35 (1)(d)	Operation of Ministerial Private Office	Public interest	Class	30 years. Note that the Lord Chancellor must be consulted about a proposed refusal to disclose in the public interest information in a record in The National Archives [2]
36	Prejudice to effective conduct of public affairs	Public interest except for information held by either House of Parliament	Prejudice test	30 years Note that the Lord Chancellor must be consulted about a proposed refusal to disclose in the public interest information in a record in The National Archives [2]

[2] In the case of records covered by the Public Records (Northern Ireland) Act 1923, whether in PRONI or retained, the 'appropriate Northern Ireland Minister' must be consulted whenever consultation of the Lord Chancellor is specified for records in The National Archives or for records retained under section 3(4) of the Public Records Act 1958

Section	Exemption	Absolute or public interest test?	Class or prejudice test?	Duration
37 (1)(a)	Communications with Royal Family and Household	Public interest	Class	30 years. Note that the Lord Chancellor must be consulted about a proposed refusal to disclose in the public interest information in a record in The National Archives [2]
37 (1)(b)	Honours	Public interest	Class	60 years. Note that the Lord Chancellor must be consulted about a proposed refusal to disclose in the public interest information in a public record that is over 30 years old or in a retained historical record [2]
38	Health and safety	Public interest	Prejudice test	Perpetual. Note that the Lord Chancellor must be consulted about a proposed refusal to disclose in the public interest information in a public record that is over 30 years old or in a retained historical record [2]

[2] In the case of records covered by the Public Records (Northern Ireland) Act 1923, whether in PRONI or retained, the 'appropriate Northern Ireland Minister' must be consulted whenever consultation of the Lord Chancellor is specified for records in The National Archives or for records retained under section 3(4) of the Public Records Act 1958

Section	Exemption	Absolute or public interest test?	Class or prejudice test?	Duration
39	Environmental information [obliged to make available under the Aarhus convention, or would be obliged but for an exemption in Regulations under s 74]	Public interest	Class	Perpetual. Note that the Lord Chancellor must be consulted about a proposed refusal to disclose in the public interest information in a public record that is over 30 years old or in a retained historical record [2]
40 (1)	Personal information where the applicant is data subject	Absolute	Class	Lifetime of data subject
40 (2)	Personal information where the applicant is a 3rd party	Qualified absolute, ie absolute in relation to categories (a)-(d) data	Prejudice test in different - and complex words, the main point being that disclosure should not cause breach of the DPPs.	Upon death of data subject at the latest. Note that where the public interest does apply, the Lord Chancellor must be consulted about a proposed refusal to disclose in the public interest information in a public record that is over 30 years old and subject to the public interest test or in a retained historical record [2]
41	Information provided in confidence	Absolute	Variation of prejudice test (breach of confidence must be 'actionable')	Perpetual

[2] In the case of records covered by the Public Records (Northern Ireland) Act 1923, whether in PRONI or retained, the 'appropriate Northern Ireland Minister' must be consulted whenever consultation of the Lord Chancellor is specified for records in The National Archives or for records retained under section 3(4) of the Public Records Act 1958

Section	Exemption	Absolute or public interest test?	Class or prejudice test?	Duration
42	Legal professional privilege	Public interest	Variation of prejudice test (claim could be maintained in legal proceedings)	30 years. Note that the Lord Chancellor must be consulted about a proposed refusal to disclose in the public interest information in a record in The National Archives [2]
43(1)	Trade secret	Public interest	Class	30 years. Note that the Lord Chancellor must be consulted about a proposed refusal to disclose in the public interest information in a record in The National Archives [2]
43(2)	Commercial interests	Public interest	Prejudice test	30 years. Note that the Lord Chancellor must be consulted about a proposed refusal to disclose in the public interest information in a record in The National Archives [2]
44	Prohibitions on disclosure: (a) Acts (b) Community obligations (c) Contempt of court	Absolute	Class	Perpetual

[2] In the case of records covered by the Public Records (Northern Ireland) Act 1923, whether in PRONI or retained, the 'appropriate Northern Ireland Minister' must be consulted whenever consultation of the Lord Chancellor is specified for records in The National Archives or for records retained under section 3(4) of the Public Records Act 1958

4 Extended closure

4.1 Statutory provisions

Sections 5(1) and 5(2) of the Public Records Act 1958 allow a variation of the thirty year period for which records ordinarily remain closed. The former provides that a class of records remains closed for thirty years or a longer period prescribed by the Lord Chancellor, with the approval or at the request of the minister[3]. Section 5(2) provides that

... if it appears to the person responsible for any public records which have been selected by him,... for permanent preservation that they contain information which was obtained from members of the public under such conditions that the opening of those records to the public ... would or might constitute a breach of good faith on the part of the government or on the part of the persons who obtained the information, he shall inform the Lord Chancellor accordingly and those records shall not be available in the Public Record Office for public inspection even after the expiration of the said period except in such circumstances and subject to such conditions, if any, as the Lord Chancellor and that person may approve, or if the Lord Chancellor and that person think fit, after the expiration of such further period as they may approve.

Both these provisions require the concurrence of the minister of the relevant department and the Lord Chancellor. The Act is silent as to the outcome if the Lord Chancellor and the minister do not agree, either in relation to closure generally under s5(1) or the period of extended closure or appropriate conditions under s5(2). The Wilson Committee report *(Modern Public Records, Selection and Access,* 1981, Cmnd 8204) suggested that the matter be raised at Cabinet level for agreement to be reached. The provisions of s5(1) are so wide that for the purposes of extended closure s5(2) is not generally invoked. Section 5(2) is, however, the provision which provides the power to allow conditional access to closed records. This is discussed at 4.5, below.

4.2 Procedure

Departmental record officers, sometimes in association with departmental sensitivity reviewers, come to a view - in discussion with their National Archives client managers - as to whether material should be opened to public inspection. The norm is, of course, that access should be provided. However, they may decide that this is not appropriate, or that release should be made conditional on specified conditions. For example, researchers may be required to give an undertaking not to reveal the identity of individuals named in records. A formal submission to the Advisory Council is then drawn up and it is first reviewed within The National Archives. Any questions or difficulties

[3] The use of the expression class of records in s5(1) is taken to mean a series or grouping of records. Its meaning is not restricted to the class in the way it is used in The National Archives catalogue

are referred back to the department. The role of The National Archives is to support the Advisory Council by ensuring that the submission is clear: it must be apparent which of the criteria for extended closure (see 4.3 below) are being invoked, and evidence must be provided to demonstrate that the terms of the relevant criteria have been met. The Advisory Council may either accept a department's application, or refer it back to the department for clarification or reconsideration. In considering such applications, the Advisory Council applies the criteria which were established in the Open Government White Paper. This manual reflects the Council's view of those criteria. Accepted proposals are forwarded to the Lord Chancellor for his approval, which is signified in a Lord Chancellor's instrument. Ultimately, the final decision rests with ministers. The Advisory Council has also considered particular categories of records and formulated policies for their opening or closure. These are given in the appendices to this manual.

4.3 **Criteria for extended closure**

The only statutory guidance in relation to the criteria for extended closure is that found in s5(2): records are not to be opened in circumstances which would constitute a breach of good faith. Since the passage of the Public Records Act 1967 successive governments have set out their policy on the criteria to be adopted for extended closure. An increasingly liberal access regime has developed. For example, the criterion relating to personal information has been reformulated twice, and each time the test has been strengthened: it has moved from 'distress or embarrassment' (1970), through 'distress' (1981), to 'substantial distress' (1993).

In 1981, in an attempt to minimise the inconsistencies between departments, the Wilson Committee report *Modern Public Records* suggested criteria for extended closure. These were accepted by the government. Material supplied in confidence, and intimate personal information, would not be released; exceptionally sensitive records would be withheld if their disclosure could be shown to be contrary to the public interest.

The Wilson criteria were replaced by those set out in the Open Government White Paper. This fixed on one overriding principle to which all exceptions are subject. This is that **actual harm must be shown to result from release,** before permission will be given to keep records closed (paragraph 9.12). It is also necessary that the damage falls within three particular criteria which are set out in Table 1 below (and are discussed in paragraphs 9.13 - 9.18 of *Open Governmen*t). The first criterion, relating to national security, contains the public interest test; the other two do not. The public interest test here in respect of national security operates exclusively in one direction: if it is not in the public interest to release the record it will be closed. The White Paper does not provide for the public interest test to be used to justify the release of sensitive records. The three criteria are discussed below.

Guidelines on extended closure

GUIDING PRINCIPLE: All records not retained in departments should be released after 30 years unless

a) It is possible to establish the actual damage that would be caused by release, and
b) The damage falls within the three criteria set out below:

Criterion (as stated in the 1993 White Paper Cm 2290)	**Nature of Record**	**Closure Period**
Exceptionally sensitive records containing information the disclosure of which would not be in public interest in that it would harm defence, international relations, national security including the maintenance of law and order or the economic interests of the UK and its overseas territories.	All records meeting this criterion, including those concerned with national security and those containing information the premature disclosure of which would impede the conduct of the policy of HM Government abroad.	40 years
Documents containing information supplied in confidence the disclosure of which would constitute a breach of good faith.	Most records meeting this criterion, including commercial and personal information supplied in confidence. Tax Information Personal information subject to a statutory bar during the lifetime of the person concerned Records of the decennial census of population	40 years, or until death where known (where appropriate) 75 years 75 years, or until death where known 100 years

Documents containing information about individuals the disclosure of which would cause either: 1) Substantial distress, or 2) Endangerment from a third party to persons affected by disclosure or their descendants	Records meeting this criterion and containing sensitive personal information which would substantially distress or endanger a living person or his or her descendants	40 – 100 years
	Records containing information from which it is likely that a woman could be identified as a rape victim	100 years

Table 1: Source *Open Government* (Cm2290, 1993)

4.3.1 ***National security, defence and international relations, national economic interests***

Open Government gives examples of types of records which may be withheld under this criterion[4]. They are those which

- Refer to possible plans for intervention in a foreign state
- Concern security or defence of a UK Dependent Territory, where release would jeopardise the security of the territory concerned
- Comment on an unresolved border or territorial dispute, not necessarily one directly involving the UK
- Comment adversely on leaders of, or the internal affairs of, foreign states

These examples are illustrations of the types of records which may meet the actual damage test. Disparaging remarks by UK ministers or officials which might cause them personal embarrassment if opened do not necessarily meet the test. In each case a judgement must be made, taking the file as a whole into account and the role and seniority of the commentator as to whether actual damage would be caused to international relations. Some examples, since 1993, of closures under this criterion which the Advisory Council has approved are given below.

[4] paragraph 9.14

- Records relating to current defence plans, which although thirty years old are still current and those relating to the location and equipment of vulnerable sites, particularly involving defence uses of atomic energy

- Publication of adverse comments by UK ministers or officials about previous foreign heads of state may harm international relations. This may occur where current negotiations could be made more difficult by release of such observations, or where the close associates or relatives of the individuals are still in power in that country

- Border or sovereignty disputes can be sensitive even if they do not directly involve the UK. This may occur, for example, between two previously colonial territories, now independent. It may harm current diplomatic relations to release records which assist one party to the dispute, while disadvantaging the other

4.3.2 ***Confidential information***

The Public Records Act provided that where records contain information obtained from the public under such conditions that opening the record would be a breach of good faith, the information will not be released. Much of the information which the government collects from individuals or companies is given on the basis of confidentiality. This, for example, would be the case with tax returns or information in support of welfare benefit claims. A relationship of confidence must arise between the parties for the material to be confidential. This happens where there is an understanding and agreement between the person providing the information and the person to whom it is supplied that the information is provided in confidence. It is unlikely that unsolicited submissions sent to government departments marked 'in confidence' would in fact attract a duty of confidence. *Open Government* recognises confidential information in the second criterion. However the White Paper imposes an additional requirement before any record will be kept closed: actual damage must be caused by release. The judgement is therefore whether actual damage will arise from the release of information today, arising from the breach of good faith. The application of this criterion is not subject to a balancing test of whether disclosure is in the public interest.

Since 1993, the Advisory Council has accepted applications in respect of this criterion for records which:

- Reveal the personal views of the Sovereign as expressed to ministers

- Contain allegations of wrongdoing, given in confidence, which were not tested in court

- Reveal the identity of witnesses who give information in confidence
- Contain medical information given confidentially
- Constitute personal references given in confidence

These are examples of records which may meet this criterion, however there should not be an automatic presumption that a record of the same type will necessarily be closed. The Council's judgement will depend on the facts of each case. For example, the Council has stated that its view on the release of records of unsubstantiated wrong-doing will turn on the gravity of the offence in question. Medical records which previously were kept closed, sometimes until long after the death of the patient, are now being opened at 30 years where the records relate to mundane matters. However the Advisory Council has accepted that the patient identifiable National Health Service files, most of which are in approved places of deposit, should remain closed for 100 years.

In 1996, the Council considered commercially confidential material supplied to government departments. It first assessed information which the informant had been obliged by law to provide under the provisions of a statute prohibiting its disclosure. In this first category the Council agreed the confidentiality could be taken to lapse after 75 - 100 years and the supplier of the information need not be consulted. Next it took a view on material which had been provided marked 'commercial in confidence'. The Council here proposed that firms should be encouraged to believe that the confidentiality would generally last thirty years. Exceptions to this, the Council recommended, would only arise if actual damage could be shown to arise from release. Finally, it turned to information supplied to the department on an express and unqualified undertaking that it would be treated as confidential. To date, this has only been found to have arisen in two cases, the case files for the Queen's Awards, and the submissions to the Committee of Inquiry into the Aircraft Industry chaired by Lord Plowden in 1965. It was suggested to the Council that thirty to fifty years was sufficient for this type of material. The Council urged departments to adopt these guidelines, which remain in force.

4.3.3 ***Information about individuals***

The third criterion for extended closure in the White Paper is given in paragraph 9.17. Its purpose is to protect sensitive personal information about individuals, the disclosure of which would cause either substantial distress or danger to the person affected by disclosure or to their descendants. The definition of substantial distress is clearly of central importance here. Both adjective and noun need to be considered carefully. The test is not one of mere embarrassment or discomfort, but distress, and the level of distress required was raised in 1993 by the addition of the qualifying adjective. Nor is substantial distress alone sufficient; as with all the other criteria, actual harm is also required. The Council has been sympathetic towards applications

for the closure of records which include medical case histories, especially when they reveal details of mental illness or socially stigmatised illness (e.g. bowel problems, infertility or impotence, or certain cancers). Records describing unusual sexual behaviour (e.g. promiscuity, masochism or frigidity) have also been made subject to extended closure. The Council's attitude towards identifying somebody as homosexual has depended on the individual circumstances. Although homosexuality has won much wider social acceptance, and some homosexual acts are, of course, now legal, this may not have been the case at the date of the record. Substantial distress may still arise from such releases and each case needs to be assessed carefully.

Substantial distress is less likely to be caused if the information has previously been in the public domain, even if it has not been formally published. On this basis, records describing treacherous conduct in the Channel Islands during their wartime occupation have been released. The behaviour of those described in the records was widely known in the community. The same consideration prompted release of the papers on the notorious case of the murderer, Peter H R Poole, in Kenya. The Advisory Council's views about the closure of files relating to serious criminal offences are found in Appendix 3.

The Council has tended not to accept submissions which seek closure of records, the disclosure of which would reflect badly on an individual's professional competence or the conduct of their job. Equally, comments on an individual's character or morality need to be of a profound nature if they are to merit extended closure. Again, a judgement needs to be made of the circumstances of a case; observations on the dishonesty of a convicted fraudster may be appropriately opened whereas the same observations about a priest, might cause substantial distress and result in actual harm and therefore rightly remain closed. In each case it must also be established that actual harm would be caused by release. The closure period is specified in the White Paper as 40 to 100 years. If it is clear that opening the record will always cause substantial distress it is closed for the nominal lifetime of the individual. It is assumed here that a person will not be alive past the age of 100. If the likelihood of causing substantial distress might not subsist so long, the closure is for forty years, and the records are re-reviewed every ten years.

The endangerment criterion raises fewer questions of judgement – and it is cited less frequently as a basis for extended closures. Records which identify informants are commonly closed during the individual's lifetime. In exceptional circumstances – notably in respect of the Irish troubles - it may be appropriate to extend this closure to protect the informant's descendants.

The release of certain types of personal information is subject to statutory restrictions. The identity of the victims of rape and many other

sexual offences are protected during the lifetime of the victim by the Criminal Justice Act 1988 and the Sexual Offences (Amendment) Act 1992. For statutory restrictions arising from the Data Protection Act 1998 see Chapter 8 below.

4.3.4 ***Multiple criteria***

Records not infrequently fulfil more than one criterion. Adverse information about a person is often given in confidence; breach of the confidence might cause substantial distress. International relations could be jeopardised by disclosure of adverse information given in confidence from a third country. Disclosure of the source of the information might deter future confidences from the same or other sources. Thus applications to the Advisory Council may be made under two or more criteria.

4.4 **Privileged access**

Section 5(4) allows the Keeper of Public Records to permit a person to inspect any record, if he or she has obtained special authority to do so from an officer of a government department or other body qualified to give such an authority. Clearly this would only be needed in relation to closed records and could apply either to material under thirty years old which had already been transferred to The National Archives or to records subject to extended closure. Whether permission is granted is entirely a matter for the department. Readers in The National Archives who wish to see closed records are given the address of the Departmental Record Officer to whom their request should be addressed. When a department considers such an application the requirements of the *Open Government* White Paper should be observed. It may prove to be the case that privileged access is inappropriate, and the record may be opened to the public generally. The National Archives will produce the record on being shown written authorisation from the relevant department to the reader, giving his/her name, the precise catalogue reference and any conditions relating to copying the records. Departments should also consider whether any other conditions or undertakings should be imposed on the reader. These might, for example, relate to restrictions on publication. If records have not been transferred to The National Archives, privileged access is entirely under the control of the department, but the same issues should be addressed.

4.5 **Undertakings**

Under s5(2) records may be made available subject to conditions approved by the Lord Chancellor and the minister or person concerned with the records. Under this provision a department may authorise The National Archives to make closed records available to any member of the public under specified conditions. This provides a way of allowing access to records which would otherwise be restricted because of one sensitive characteristic. The conditions imposed would be such as would protect the sensitive nature of the record which gave rise to its closure. For example, access to thirty year old National Assistance

Board papers is allowed before the expiry of the 75 year closure period on an undertaking not to publish private or personally sensitive information. The National Archives operates undertakings relating to several specific classes of closed records, the terms of which have been drawn up by departments in consultation with The National Archives.

4.6 **Redaction**

Sometimes a record is only sensitive because it contains a few words or sentences which may not be released. These may be names of individuals, sums of money in commercial transactions, or damaging comments about individuals, organisations or countries. The redaction or blanking out of the sensitive information may enable the whole of the rest of the file to be released. The original record is, of course, not amended, the changes being made to a photocopy, which is recopied and placed in the released record, while the original remains closed to be reviewed and released at a later date. The increasing use of redaction in recent years has allowed the release of many records which would otherwise have been withheld. The practice is strongly supported by the Advisory Council.

5 Retention

5.1 **Legal position**

Section 3(4) of the Public Records Act requires departments to transfer to The National Archives – or to an approved place of deposit – those records which have been selected for permanent preservation. This must take place by the time the records are thirty years old, unless departments receive authorisation to keep them for longer. Provision for retention is made in the second part of s3(4)

Provided that any records may be retained after the said period if, in the opinion of the person who is responsible for them, they are required for administrative purposes or ought to be retained for any other special reason and, where that person is not the Lord Chancellor, the Lord Chancellor has been informed of the facts and given his approval.

This provision refers to all public records. Departments wishing to retain records which are needed administratively, but which have not been selected for permanent preservation, must apply for the Lord Chancellor's approval to do so.

Retained records, if selected for permanent preservation, are listed in The National Archives catalogue and are subject to the provisions of the Public Records Act.

The *Open Government* White Paper requires departments to review retained records, other than those retained for administrative purposes, every ten years, and to consider whether actual damage would be

caused by their release. This is achieved by instruments being made for a retention period of ten years or less.

5.2 Categories of retained documents

5.2.1 *Administrative retention*

Documents retained for administrative purposes fall into two categories. First are those which are in continual use. These could be maps relating to operations still under way, or contracts or leases which are still live. The second relates to records which will, in part at least, be transferred but the reviewing process has not been completed. Where review, selection and transfer of records to The National Archives has not taken place before the records are thirty years old, the Lord Chancellor's approval is necessary to legitimise the retention of the records within a department. This type of retention is the exception, not the rule, and the Advisory Council scrutinises such applications with particular care. The department will need to specify when they expect to have transferred the records and to satisfy the Council that sufficient resources are being made available for the backlog to be cleared in the stated period. The retention will only be authorised for the period needed to clear the backlog. Where records have been selected as suitable for permanent preservation, but are retained because of a continuing administrative need, departments are expected, wherever possible, to make them available to the public, and to inform the public of their availability. The Advisory Council now asks for details of such arrangements when considering applications of this type.

5.2.2 *Retentions for 'Any other special reason'*

The *Open Government* White Paper indicated that retention for any other special reason, in the words of s3(4), is appropriate for records whose sensitivity is such that it cannot be estimated when the record may be released, i.e. the sensitivity is indefinite. This provision has most commonly been used for national security records which retain a high classification. The blanking out procedure discussed in 4.6 above should be considered if the removal of a small portion of the record would enable the rest of the file to be opened.

5.3 Criteria for retention

The grounds for retention in the *Open Government* White Paper are somewhat less clear than those relating to closure. The White Paper imposes the requirement that the Lord Chancellor's Advisory Council should see and advise the Lord Chancellor on applications to retain records. The reasons for retention are given in paragraph 9.26 and are:

- *Administrative (e.g. to allow the reviewing process to be completed)*
- *National security*
- *International relations/defence/economic*

- *Material given in confidence*

- *Personal sensitivity (would substantially distress or endanger persons affected by disclosure or their descendants)*

The public must be told which of these reasons applies to the records unless to do so would put at risk the information which has led to the material being withheld. The Advisory Council will require sufficient detail about the records to be satisfied that the retention is proper. The Advisory Council uses an aide-memoire of commonly cited grounds for retention, which is based on the previous practice of the Council.

5.4 **Blanket retentions**

In some instances the Lord Chancellor has given his approval to the retention of large categories of records of a similar character. The reasons for non-disclosure are the same for each record covered by such approvals. The White Paper refers to these instruments as giving a 'blanket' approval to retain. The Lord Chancellor's instruments giving 'blanket' approvals to retain are:

- Security and Intelligence material: created down to 1971 retained until the end of 2011. The extent of the material covered is set out below

- Classified records of the Special Branch of the Metropolitan Police: 1956 to 1975 retained until 2006

- Atomic Energy, post – 1956 defence-related material: retained until the end of 2006. This provision is not now used, and individual closure or retention instruments are sought if necessary in relation to individual items

- Personal records of civil servants created before 1975 are retained for administrative purposes to 2005

- Personal records of the members of the armed forces and Home Guard created before 1970 are retained until the end of 2010 and those created between 1970 and 1979 are retained until the end of 2020

- Teachers' pensions files and teachers' misconduct files created between 1914 and 1978 are retained to 2009

Previous blanket approvals were given in relation to various defence matters, but these have expired and have not been renewed. The most widely used blanket is that relating to intelligence and security. It covers records held by or on behalf of the Government Communications Headquarters (GCHQ), the Secret Intelligence Service (SIS) and the Security Service, and other records which relate to security or intelligence service activities, and which are held by the agencies

themselves or by any other department. However, the White Paper indicates that intelligence-related documents held in other departments are to be reviewed in the normal manner and released if they are no longer sensitive. There is no obligation to retain all material which could fulfil the criteria of the instrument; the blanket is an administrative tool to avoid the need for a long list of itemised applications to retain records.

Guidelines on retention

The following table provides a summary of the most common grounds for retention. The numbers below are those used on applications to the Advisory council. Normally a retention period of up to 5 years is granted when grounds 1 to 5 or 7 are satisfied and up to 10 years for ground 6.

Number	Grounds for retention
1	Records or series of records which have not been selected for transfer to The National Archives or a place of deposit, but which the department has retained beyond 30 years because they are required for its own administrative purposes.
2	Records or series of records that have been selected for transfer to The National Archives or place of deposit but are still required for administrative purposes.
3	Series of records which are known to contain items over 30 years old, but which it is more effective to treat as a unit for Second Review Purposes to review at a later date related to the age of other records in the series.
4	Records or series of records which form part of a backlog awaiting Second Review or preparation for transfer.
5	Records or series of records which have been retained for the writing of official histories.
6	Records retained in departments on security or other specified grounds.
7	Records of international organisations for which there is not yet any agreement for release.

6 Records outside The National Archives

6.1 Places of Deposit

Section 4(1) provides

If it appears to the Lord Chancellor that a place outside the Public Record Office affords suitable facilities for the safe-keeping and preservation of records and their inspection by the public he may, with the agreement of the authority who will be responsible for records deposited in that place, appoint it as a place of deposit as respects any class of public records selected for permanent preservation under this Act.

The section continues, dealing with various local courts' records to be kept in the local area, and administrative arrangements for movement and transfer of records. There are three different categories of places of deposit. The most numerous category is that of the local authority record offices, throughout England and Wales, holding public records (for example, court and hospital records) of strong local interest. Some national institutions, such as the British Museum or the Imperial War Museum, are appointed to hold their own administrative records and/or specialist material. The National Sound Archive, part of the British Library, holds government material in the form of sound recordings. Section 5, which deals generally with access to records, imposes an obligation, in s5(5), on those responsible for places of deposit to have arrangements for public access comparable with those for public records at The National Archives, and to impose closure periods in accordance with s5(1) and s5(2) under the criteria discussed in Chapter 4 above. These arrangements may include, where appropriate, access to closed public records on a privileged basis – or subject to signature of an undertaking (see 4.4 and 4.5, above).

In 1992, when The National Archives became an executive agency, the power to appoint places of deposit was delegated by the Lord Chancellor to the Keeper. Places of deposit are expected to match as far as possible the standards found in The National Archives. These standards are set out in greater detail in the Archives' guidance *Beyond The National Archives: Public Records in Places of Deposit.*

6.2 **Temporary return to the department**

The Public Records Act gives the Keeper various duties and responsibilities in relation to records, but the records in The National Archives remain the property of the departments that generated them. Section 4(6) gives the department or office that transferred the records the right to have them returned temporarily, either from The National Archives or a place of deposit. Departments are strongly encouraged to return records as soon as possible, and keep them for an absolute maximum of one year. If open records which have been temporarily returned to the department are asked for by a reader at The National Archives, or at a place of deposit, they should be returned immediately to The National Archives.

6.3 **NDAD and NFTVA**

Some records require housing in special conditions. Section 2(4)(f) empowers the Keeper to make arrangements for such records to be kept under the required conditions at places outside The National Archives at Kew. The UK National Digital Archive of Datasets (NDAD) is stored at London University and public record films are held in the British Film Institute's National Film and Television Archive (NFTVA). The records stored in these places are still in the guardianship of the Keeper; they are not places of deposit. Access to NDAD occurs in the same way as to records at The National Archives. Access to the

NFTVA material is in principle also the same but records to be viewed must be ordered in advance.

7 Other legal restrictions on access

7.1 Statutes

The Public Records Act specifically provides in s5(3) that

Subject to the foregoing provisions of this section, subject to the enactments set out in the Second Schedule to this Act (which prohibit the disclosure of certain information obtained from the public except for certain limited purposes) and

subject to any other Act or instrument whether passed or made before or after this Act which contains a similar prohibition,

it shall be the duty of the Keeper of Public Records to arrange that reasonable facilities are available to the public for inspecting and obtaining copies of public records in the Public Record Office.

These provisions are important: where a statute prohibits the disclosure of information – whether one listed in the Schedule to the Act, or passed before or after the Public Records Act was enacted – the Act does not override the statutory bar on disclosure. This is in contrast to data protection legislation which overrides statutory prohibitions. There are a number of different reasons why a statute may contain such a bar. Some, such as the Sexual Offences (Amendment) Act 1992, mentioned above at 4.3.3, or the Adoption Act 1976 are for the protection of personal privacy; some such as the Nuclear Installations Act 1965 are for the protection of national security, but by far the most, and there are several hundred, are for the protection of individuals and businesses who are asked to supply confidential information relating to their activities for the purposes of national planning and control.

7.2 Defamation

The public right of access to open records can result in the release of information into the public domain which is potentially defamatory, in that the material is derogatory or discloses spent convictions. This is generally not a sufficient reason for keeping the records closed.

Libel is the publication of written words which lower a living person in the estimation of right thinking members of society generally. It is a defence if the material can be proved to be true, but it is for the 'publisher' to prove this and it could be difficult with records of some age. Damage need not be proved but is assumed to have occurred, and any communication made by one person to another about a third party, however private, can be defamatory. When the record is made available to a member of the public this amounts to publication which could, depending on the record's contents, give rise to a cause of action.

Qualified privilege can be a defence to libel. It may arise where two people have a duty to make and an interest in receiving the communication, and where it is in the public interest that communication be unfettered. Under these conditions and in the absence of malice, or spite, no action can be taken against the defendant.

The purpose of the Public Records Acts 1958 and 1967 is to safeguard the records of central government and the courts of law and to make the records available to the public for inspection and copying after the prescribed period. Section 2(3) of the Public Records Act provides that it is the Keeper's duty to safeguard the records and s2(4) gives the Keeper powers to maintain the utility of the Office by providing facilities for inspection, copying, and compiling guides and indexes. Section 5(3) places the Keeper under a duty to provide facilities for public inspection and copying of the records. Qualified privilege affords a defence if there is both a duty to disclose and the public interest in disclosure is sufficient. The Keeper is clearly under a statutory duty to disclose, which has been imposed because there is a public interest in the records being available to the public. It is considered therefore that qualified privilege attaches to records properly opened in the course of The National Archives' normal activities.

In another field, that of breach of confidence, it has been established that the public have a legitimate interest to be weighed against other interests in knowing how they have been governed. It has always been accepted that Cabinet deliberations are confidential. As a result of the publication of Richard Crossman's diaries, a case was taken by the Attorney-General against the publisher for breach of confidence[5]. It was held that the public interest in disclosure outweighed the protection of the information given in confidence once the material was sufficiently old. In this case that period was taken to be 10 years.

7.3 The Rehabilitation of Offenders Act 1974

The Rehabilitation of Offenders Act provides that, for the less serious offences, a person's criminal convictions are not held against him/her forever. After a particular length of time, which is longer the more severe the sentence, a person is said to be rehabilitated. The conviction is then referred to as 'spent' and it may not be disclosed, except in prescribed circumstances. A fine is a spent conviction after 5 years; whereas a prison sentence of over 30 months can never become spent. These provisions operate in the opposite direction from the guidelines on opening records to the public, which afford greater privacy in respect of more recent events. The powers of the Keeper in s2(4) and the duties in s5(3) of the Public Records Act provide that the public should have reasonable facilities for the inspection of open records. Section 9(2) of the Rehabilitation of Offenders Act permits

[5] Attorney General v Jonathan Cape Ltd [1976] QB 752

disclosure in the course of official duties. The National Archives has been advised that its activities in making records of criminal convictions available to the public fall into this category. Thus decisions by departments on whether to open records are to be made on the basis of the criteria in the Open Government White Paper, considering, for example, whether disclosure would cause actual harm and substantial distress, irrespective of whether the conviction in question is spent or not.

7.4 **The Human Rights Act 1998**

The European Convention on Human Rights is, from 2 October 2000, directly enforceable in the courts of the United Kingdom. Courts are obliged, wherever possible, to interpret laws compatibly with the observance of convention rights. If this is not possible a declaration of incompatibility is made and the law may be changed by statutory instrument. Articles 8 and 10 are those relevant to access to archives. Article 8 imposes a right to respect for private and family life and Article 10 imposes a right to receive and impart information. For both Articles, the right may only be denied if the denial of the right is necessary in a democratic society.

Article 8 imposes a right to respect for private and family life and correspondence. It is essential therefore that those making decisions in relation to the opening of records containing personal information exercise this respect. Case law on the infringement of the right to private life has covered the activities of fact-gathering departments, whether collecting medical records, tapping telephones, recording financial information or carrying out surveillance. The collection of the information has been held to show a lack of respect, and can amount to a breach of the Article. There is no need for the material to be published for the infringement to have taken place; although the more widely distributed the information is, the greater the infringement. The second paragraph of the article gives the circumstances in which an infringement of the right can be allowed by law, if it is necessary in a democratic society. These include the protection of the rights and freedoms of others. Were the publication of archive material to infringe privacy, reliance would be placed on this condition. There do not appear to be any cases arising from complaints in relation to the making public of private information stored in archives.

Article 10 establishes freedom of expression. This includes a freedom to receive and impart information. However it may be subject to restrictions prescribed by law required for various purposes including the preventing of disclosure of information received in confidence. Other restrictions protect national security, public safety, prevention of crime, public health and morals, the reputations and rights of others and the impartiality of the judiciary.

Statute barred records:

It is possible that a court would find that a statutory bar to access to government held records would be incompatible with Article 10 once the purpose for the ban had lapsed. A court might find that where a statute contains a bar to disclosure of unspecified length, it could be taken to lapse when its purpose had ended. If a court felt unable to do this, a statutory instrument passed under this remedial provision would be necessary to render the law compliant with the Convention, as the bar would not be necessary in a democratic society.

8 Data protection

8.1. Introduction

The purpose of data protection legislation is to prevent wrong decisions about people being based on inaccurate data and unauthorised use of data. Archivists have a different role in relation to data, from those who collected the data for their own purposes. First, they do not control the type of data collected, nor do they have an interest in the actual information contained in it; secondly, they are concerned in its being a contemporary not an accurate record; and thirdly they have no interest in the future of the individual data subject, only their past. This means that the activities of archivists sit uneasily within the data protection legislative field, as at times they are obliged to comply with provisions which were designed for a different purpose. However the Data Protection Act 1998, which came into force in March 2000, does recognise the importance of data being kept for historical purposes, and contains provisions for this to be achieved within the framework of the legislation. Those records managers and archivists who have been accessioning electronic records will be familiar with the provisions of the Data Protection Act 1984. It imposed a duty on those holding personal data to register with the Data Protection Registrar, to comply with eight data protection principles, and to allow people to access and, in certain circumstances, to correct data that related to them. The new Data Protection Act 1998, referred to below simply as the Data Protection Act, is based on the EC Directive 95/46/EC. Many of the principles underlying the 1984 Data Protection Act remain, but there are some significant developments, not the least of which is the extension of the data protection regime to manual records. A copy of the Data Protection Act may be seen at http://www.opsi.gov.uk/acts/acts1998/19980029.htm.

8.1.1 *Warning*

The advice set out below was prepared in 2000 and is based on the Data Protection Act, and on *The Data Protection Act 1998, An Introduction* produced by the Data Protection Registrar in October 1998. The National Archives has published, in association with the Office of the Data Protection Commissioner, a guide entitled *Data Protection Act 1998, A Guide for Records Managers and Archivists* which is available from The National Archives. The Data Protection Act contains provisions for the Data Protection Commissioner to approve codes of practice drawn up by professional and trade associations.

8.1.2 ***General***

This chapter emphasises those parts of the legislation that have changed, and concentrates on those provisions that may affect records managers and archivists. There are particular provisions relating to specialised archives; these are, among others, those of the police, schools and health bodies. Access to these has not been covered in this manual. Those parts of the text in *italics* are direct quotations from the Data Protection Act.

8.1.3 ***Legislative framework***

The kernel of the Data Protection Act is s4(4). This provides that *it shall be the duty of a data controller to comply with the data protection principles in relation to all personal data with respect to which he is the data controller.* These principles are set out in Schedule 1 of the Act. They are broadly similar to those of the Data Protection Act 1984 but have been altered somewhat to accommodate the changes in other areas of the new Act. They are considered in detail in 3.1 below. Generally, those processing personal data, i.e. data controllers, are obliged to register a notification with the Data Protection Commissioner giving details of themselves, the data, the purposes for which the data are processed and various other details (s16). They are also obliged to comply with Part II of the Act which gives the data subject, i.e. the person to whom the data relates, a number of rights. Among these is the right to be told which data are held about them, why they are held, where they came from and where they may be sent. Most of the definitions under the new Act will come as no surprise. Unlike the 1984 Act, the new Data Protection Act requires compliance with the Principles by all data controllers, even where they are exempt from notification. Those handling only manual personal data benefit from the exemption from notification provided by s17(2), unless they are carrying out assessable processing, (see 8.2.6). But this does not exempt them from compliance with the rest of the Act, unless they can benefit from another outright or transitional exemption. There is provision for voluntary registration.

8.2 Definitions and concepts

8.2.1 ***Data and personal data***

There are new definitions in the Data Protection Act for data and personal data s1(1):

'data' means information which:

a) *Is being processed by means of equipment operating automatically in response to instructions given for that purpose*

b) *Is recorded with the intention that it should be processed by means of such equipment*

c) *Is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system, or*

d) *Does not fall within paragraph (a), (b) or (c) but forms part of an accessible record as defined by section 68 ...*

'personal data' means data which relate to a living individual who can be identified:-

a) *From those data, or*

b) *From those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,*

and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual.

The definition of data represents a significant extension to paper records: data now include information that is recorded as part of a *relevant filing system* or is intended to be included in such a system. A *relevant filing system* is any set of information relating to individuals, which is structured, either by reference to individuals or by reference to criteria relating to individuals, in such a way that specific information relating to a particular individual is readily accessible, s1(1). What this actually means in practice remains to be seen. In a parliamentary debate on the introduction of the bill the minister responsible for the legislation suggested that this would not include personnel files unless these are structured in such a way that you can easily find the information relating to a particular person: only then would they be structured in such a way that specific information relating to a particular individual is readily accessible. What would certainly not be caught by this provision would be references to individuals in files in systems structured by reference to topics not relating to individuals. These might be minutes of meetings, policy papers, or planning files, in all of which individuals might be mentioned in passing.

The Data Protection Act 1984 established subject access rights to data processed by equipment operating automatically. A right of access to certain classes of manual data, principally records of the data subject's health or education was provided by other legislation. These data are referred to as *accessible records* which is defined in s68. The definition of *data* now includes *accessible* records. Thus accessible records are data to which the terms of the Act apply even if they do not fulfil the general requirement for manual data by forming part of a *relevant filing system.*

8.2.2 ***Processing,* s1(1)**

This has a very wide meaning. It covers obtaining, recording or holding the information, or carrying out the following operations in relation to it:

- Organisation, adaptation or alteration
- Retrieval, consultation or use
- Disclosure by transmission etc., or
- Alignment, combination, blocking erasure or destruction

8.2.3 ***Data controller,* s1(1)**

This is the person who determines the purpose and manner of the processing of the personal data. There may be more than one data controller in relation to data.

8.2.4 ***Sensitive personal data,* s2**

This is a new concept and means personal data consisting of any information on the data subject's

- Racial or ethnic origin
- Political opinions
- Religious, or other, beliefs
- Trade union membership
- Health, physical or mental
- Sex life
- Offences, committed or allegedly committed, or
- Details of proceedings for offences

The conditions for legitimate processing of sensitive personal data are stricter than those for other data. The first data protection principle sets out the requirements for fair and lawful processing and is covered at 8.3.1 below.

8.2.5 ***Special Purposes,* s3**

The *special purposes* are defined as those of journalism, artistic purposes and literary purposes. Research, historical and statistical purposes, although treated differently by the Act do not fall within the definition of *special purposes.* The processing for the special purposes is exempt under s32 (where compliance is incompatible with the special purpose) from

- The data protection principles, except that relating to security, (seventh)
- Subject access (s7),
- Prevention of processing likely to cause substantial damage or distress (s10)
- Rights on automatic decision making (s12), and
- Rights to rectification by court order (s14)

But the data controller must reasonably believe that publication would be in the public interest, having particular regard to the public interest in freedom of expression.

8.2.6 ***Assessable processing***

This is a new category of processing which may be subject to close oversight by the Commissioner. The areas in which this has been discussed are data matching, processing genetic data and processing by private investigators. However there appear to be no plans at present to implement these provisions.

8.2.7 ***Data subject rights, s7, ss8–14***

The rights of data subjects have been expanded. In addition to the right to be informed whether, and what data are being processed, the data subject is entitled to be given the purposes (7(b)(ii)) for which the data are being processed and (s7(b) (iii)) the recipients to whom the data may be disclosed. If the data controller has the source of the data, the data subject is entitled to be told it (subject to the provisions of s 7(4) and (5)). The personal data of the data subject must be given to him or her in an intelligible form and, unless this would involve disproportionate effort, in a permanent form s8(2)(a). Records managers should remember here that manual data are generally only data to which the Data Protection Act applies if information relating to a particular individual is readily accessible. This is because it has to be readily accessible to form part of a *relevant filing system,* and thereby to be included in the definition of data, (see 8.2.1 above). There are provisions relating to the situation that arises if the data controller cannot comply with the request without disclosing information relating to another individual and also provisions for preventing processing likely to cause damage or distress. Section 34 provides that if the data are publicly available by virtue of the requirements of any statute, subject access and rectification provisions, among others, do not apply. The public records which are open to the public would benefit by this provision.

8.2.8 ***Research purposes, s33***

The definition of *research purposes* in the Act includes processing for statistical or historical purposes. This is an important section for records managers and archivists, as it lays down the conditions with which the data controller of an archive should comply if the archive is to be exempt from compliance with various requirements of the Act. There are also transitional exemptions from compliance with parts of the Act – some indefinite – which apply to processing for research purposes.

Without the benefit of the provisions of this section, archiving data would be in breach of the second and fifth data protection principles. The second data protection principle requires that personal data shall only be obtained for one or more specified and lawful purposes and shall not be further processed in a manner which is incompatible with such purpose(s). The fifth data protection principle requires that personal data shall not be kept for longer than is necessary for such purpose(s). Section 33 provides that processing for research purposes is compatible with the purposes for which the data were collected, and the data may be kept indefinitely if the *relevant conditions* apply. These are:

- That the data are not processed to support decisions about individuals, and
- That substantial damage or substantial distress is not likely to be caused to any data subject

Thus personal data can be selected for permanent preservation, and stored, if these two conditions apply, on condition that the other data protection principles are complied with. Although these include data subject access rights this need not be onerous. Manual data is only data falling within the scope of the Act, and hence subject to data subject access rights, if the information relating to the particular individual is readily accessible. The exemption from compliance with data protection principles two and five remains if the data are disclosed to the data subject or to third parties for research purposes, s33(5). Thus the disclosure of archived personal data for research purposes does not give rise to an obligation to comply with data protection principles two and five. If the results of any research or any resulting statistics are anonymised and the *relevant conditions* apply, the data additionally become exempt from data subject access rights. Of course in every case the Act only applies if the data subject is still alive. Transitional exemptions apply to historical research, see 8.4 below.

8.3 **The Data Protection Principles**

There are eight principles with which data controllers must comply. These are found in Part I of Schedule 1 to the Data Protection Act. Part II of that Schedule provides the interpretation of some of the principles in detail.

8.3.1 ***The First Data Protection Principle: Fair and lawful processing***

This specifies that processing must be fair and lawful; this is expanded upon in paragraphs 1 to 4 of Schedule 1 part II. The person from whom the data are obtained must not have been deceived or misled as to the purpose for which the data were obtained. The data subject, if the data have been obtained from him, must be told the name of the data controller and the purpose of the processing and any further information necessary to enable processing to be fair. Where the data are not obtained from the data subject, he should be given this information unless this would involve disproportionate effort. The first data protection principle further specifies that data shall not be processed unless one of the conditions in Schedule 2 is met. If the data are sensitive personal data at least one of the conditions from Schedule 3 must also be met. All archivists and record keepers in the public sector will be exercising their statutory functions and so they would benefit by paragraph 3 of schedule 2 which permits processing of non-sensitive data in compliance with any legal obligation. The similar provision in relation to sensitive data is at Schedule 3 paragraph 7(1)(b) *for the exercise of any functions conferred on any person by or under an enactment* and although worded differently, is probably sufficient to allow processing.

8.3.2 ***The Second Data Protection Principle: Processing for a specified and lawful purpose***

This requires data to be obtained for one or more specified and lawful purposes, and not to be further processed in any manner incompatible with that purpose. It incorporates the previous second and third principles. We have noted above that for research purposes, further processing is not incompatible with the purpose for which the data were specified as having been obtained, s33.

8.3.3 ***The Third Data Protection Principle: Data not to be excessive***

This requires data to be adequate and not excessive for their purpose. The basic principle is also to be found in the 1984 Data Protection Act but its meaning has now altered because of the changes to the definition of processing. Data should not have been collected or retained unless they were necessary for the purpose for which they were to be used.

8.3.4 ***The Fourth Data Protection Principle: Accuracy of data***

This requires the data to be accurate and to be kept up to date. Clearly there is a potential issue here for records managers and archivists, since it is important to preserve a contemporary record and not necessarily an accurate one. Where there is a breach of this data protection principle the Commissioner can request rectification which if not complied with may be ordered by the court under s14. If appropriate precautions are taken, the fourth data protection principle will not be regarded as contravened, (schedule 1 part II paragraph 7). The precautions required are as follows:

- Where data have been obtained from the data subject or from a third party and if, having regard to the purpose for which the data were obtained and have been further processed, the data controller has taken reasonable steps to ensure the accuracy (perhaps by being careful what is transmitted to him/her; or by cross-checking it in some way), and

- If the data subject has told the data controller that the data are in his/her view inaccurate, a note is made and placed with the data

If these precautions are taken, then the court may make an order requiring the data to be supplemented by a statement of the true facts.

If the data controller is obliged under any enactment to make the data available to the public then the fourth data protection principle and the rectification provisions do not apply, s34.

8.3.5 ***The Fifth Data Protection Principle: Data not to be kept longer than necessary***

This principle is also subject to the s33 research exemption. Archivists will not therefore be in breach of this principle if they are processing for research purposes.

8.3.6 ***The Sixth Data Protection Principle: Data subject rights***

This principle imposes the data subject rights, which are found in Part II of the Act, from section 7. These have been covered in 8.2.7 above.

8.3.7 ***The Seventh Data Protection Principle: Security***

Data must be protected against unauthorised processing or damage. The level of security must be appropriate to the nature of the data and the harm which could result from misuse. Where data are processed on behalf of a data controller by a data processor, further safeguards are imposed requiring written contractual terms.

8.3.8 ***The Eighth Data Protection Principle: Transfer outside the European Economic Area***

Data may not be exported outside the EEA unless to a country or territory where the rights of data subjects can be adequately protected. Schedule 4 lists cases where the Principle does not apply.

8.4 **Transitional provisions**

Transitional relief is dealt with in Schedule 8. The transitional reliefs from compliance with certain provisions of the Act apply to data which is subject to processing which is *already under way* immediately before 24 October 1998. This is called *eligible dat*a. The meaning attached to the term *already under way* is of crucial importance as processing of data in relation to which processing is not *already under way* on the relevant date must comply with the new Act immediately. There are two periods of relief: that ending on 23 October 2001, and that thereafter to 23 October 2007. Different provisions apply to different types of data in these different periods. These are summarised below.

8.4.1 ***Exemptions to 2001***

8.4.1.1 ***Manual data***

With the exception of accessible data, (i.e. those which were previously subject to data subject access under other legislation, relating to health education etc.) manual data are exempt from all the data protection principles and Part II (data subject rights) and Part III (notification requirements), so actually the Act has no effect. A further exception to this is the records of credit reference agencies. Both these, and the accessible records enjoy exemptions from only some provisions. These can be found in paragraphs 3 and 4 of Schedule 8.

8.4.1.2 ***Automated data***

Payroll and accounts, mailing lists and membership lists, where the data subject has recorded no objection, enjoy the same exemptions as do manual data. Eligible automated data are only to be regarded as being processed if they are processed by reference to the data subject. Schedule 8 paragraph 13 gives the complex list of those provisions in the Act from which eligible automated data are exempt; basically these are the features that are requirements of the new Act, but were not of the old.

8.4.2 ***Exemptions to 2007***

8.4.2.1 ***Non historical processing***

Paragraph 14 applies to eligible manual data held before 24 October 1998 and accessible data. The data are exempt, until 2007, from the first data protection principle with the exception of the duty to notify the data subject with the purpose of collection and the identity of the controller (Schedule 1 part II paragraph 2). This duty is to be carried out *so far as is practicable* and we believe that this is unlikely to be reasonably practicable in most instances for most archivists although each case will need to be considered on its own facts. Eligible manual data and accessible data are also exempt from data protection principles 2, 3, 4 and 5 and from the rectification provisions in s14 (1) to (3), but remain subject to the modified data subject rights in Schedule 13 provisions. This set of exemptions appears again in the Data Protection Act; in 8.4.3.1 and 8.4.3.2 below, they are cited as the limited exceptions. This leaves the data, with effect from 24 October 2001, subject to compliance with paragraphs 2 of Part II of Schedule 1; data protection principle 6 which affords the data subject rights; data protection principle 7 imposing standards of security, and data protection principle 8 which provides limitations on the transfer outside the EEA as well as Part II of the Data Protection Act (Individuals' Rights) except rights of rectification etc., and Part III of the Data Protection Act (Notification). Again Schedule 13 applies.

8.4.3 ***Permanent (or indefinite) exemptions from 24 October 2001 for historical research.***

If the exemptions set out below are to apply, historical processing must be in compliance with the *relevant conditions* as defined in s33 (see 8.2.8, above).

8.4.3.1 ***Historical manual processing***

This does benefit from the limited exceptions set out above in 8.4.2.1. This means that archivists processing only paper records have an indefinite exemption from those provisions.

8.4.3.2 ***Historical automated processing***

This is exempt only from that part of the first data protection principle which requires compliance with the Conditions in Schedules 2 and 3 (the conditions for legitimate processing of non-sensitive and sensitive data respectively). However, if the data are processed otherwise than by reference to the data subject they benefit by the limited exceptions set out in 8.4.2.1 above.

8.4.4 ***Indefinite exemption***

Processing which was under way immediately before 24 October 1998 is not assessable processing, for the purposes of s22, and so does not require prior checking by the Data Protection Commissioner.

Conclusion

This manual aims to set out the working system governing access to public records. The Freedom of Information Act has now been passed. Its proposals will radically change the legal framework governing access to all government information. The manual will be revised periodically to take this and other changes in legislation into account. We are grateful to all those colleagues in government departments and elsewhere who gave their time to reading the consultation draft and making suggestions. Without this feedback this manual would have been significantly less helpful.

Comments and suggestions for future editions would be most welcome and should be made to Access Manager at The National Archives or emailed to *records.management@nationalarchives.gov.uk.*

Appendices

Appendix 1

Definition of public record body

1. The first schedule of the Public Records Act contains provisions for determining what is a public record. Paragraph 2 of that schedule provides that administrative and departmental records which belong to Her Majesty, whether departmental or being records of an office, commission or other body set up by the government, are public records. Sub paragraph (2) excludes certain records, most notably those of births, deaths, marriages and adoptions. Paragraph 3 of the schedule contains a table listing various bodies which are public record generating bodies, Part I being bodies under government departments and Part II being other establishments and bodies. Paragraph 4 lists the various courts and tribunals, the records of which are public records.

2. Where a new body is established it will be a public record generating body if it is clear that it is a part of the government e.g. the Department of Culture Media and Sport. It may not be a department but may report to a minister, such as a Next Steps Agency e.g. the Passport Office or HM Prison Service. In determining the status of a new body, a variety of factors are considered, including how it is funded and to whom it is responsible. Non governmental bodies will only be public record generating bodies if the legislation setting them up adds them to the list in Part II, by amending the Public Records Act to include them. Non-public record bodies may have their records treated as public records by an Order in Council approved by each House of Parliament.

3. The Advisory Council has recently confirmed that private papers and correspondence which find their way on to government files are public records where these were acquired in the course of the legitimate business or activity of the department, unless ownership was reserved by the person from whom the material was received. The status of such material is not different from that of letters sent directly to a department and as such is subject to public records legislation. Access to such material should be assessed on a case-by-case basis, according to the usual criteria for retention or extended closure.

Appendix 2

Advisory Council on Public Records

1. The Advisory Council on Public Records is established by section 1(2) of the Public Records Act 1958. The duties imposed on the Council by the Act are:

> *To advise the Lord Chancellor on matters concerning public records in general and, in particular, on those aspects of the work of the Public Record Office which affect members of the public who make use of the facilities provided by the Public Record Office.*

This sub section also appoints the Master of the Rolls to be the chairman of the Council.

2. A summary of each meeting is published on the Council's pages on The National Archives website http://www.nationalarchives.gov.uk/advisorycouncil/default.htm and on notice boards at Kew and the Family Records Centre. Copies are also sent to the House of Commons Library, the Institute of Historical Research, the Royal Historical Society and the British Academy.

3. The business of the Council is dominated by the consideration of applications from government departments for the retention or extended closure of public records. The Council applies the principles set out in the body of this Manual. The Council also sees and notes applications for accelerated opening and reduction of extended closure, but these are not discussed, unless they raise wider issues. Members of the Council consider the applications in considerable detail. If they have general questions or feel that some application is not justified, this is raised with the Head of The National Archives Records Management and Cataloguing Department, who attends the meeting. If he or she has insufficient information to explain the reasons for the application adequately, it is taken up with the department and the matter reported back to the next Council meeting. If the Council is not satisfied with the responses of a department it may ask it to re-consider its application; this frequently results in the application being withdrawn and the document in question being released.

4. The Council has the right to request that a member nominated by the Chairman inspect documents if it is unable to obtain satisfactory responses from the department, and has twice exercised this right. The result in both cases was that the Council agreed to the closures applied for. It does not apply to intelligence-related material; in such a case the Council would ask the Secretary to the Cabinet to inspect the documents on its behalf.

5. The Council is the place of appeal for individuals who have unsuccessfully requested the release of papers by departments. The Council dealt with two such applications during 1999-2000. As a result of these appeals, in the first case, the department released almost all of the information requested, but approved the withholding of some personal information; and in the second case, the appeal was found to have been based on a misunderstanding between the appellant and the department over the survival of the records in question.

6. The Lord Chancellor only signs an Instrument of retention or closure once he has received the advice of the Council. Items which have been queried are removed and will only be put to the Lord Chancellor once the Council has approved them.

Appendix 3

Policy on closure of files relating to murder and other serious violent crimes

1 The Advisory Council has approved these guidelines for extended closure of files relating to murder and other serious violent crimes. The principles to be followed are those found in the *Open Government* White Paper. The issues raised are confidentiality and substantial distress. The guidelines were agreed in relation to files created by the Court Service and the Crown Prosecution Service but are applicable to all criminal case files.

2 It is a basic principle that information may not be withheld which has already been in the public domain. Most information used in court falls into this category. Where it is clear from the file that the information was released in open court, it should be released. An exception to this arises in the case of juveniles and is considered below at 9.

3 However it is not always possible to tell from the files what material was given in open court or even what material was prepared with the intention that it be given in open court. There are also instances where part of the evidence was made available only to the jury or only to the judge, the hearing was held in private, or there were reporting restrictions. In these instances the sensitivity of the information should be the determining factor in whether it is released.

4 All parties to the case, including the convicted offender, are regarded as having a right to privacy in all aspects of their lives not directly relevant to the crime in question. Information relating to the accused which is material to the case should be made available in full if the defendant was found guilty, but should be subjected to the standard tests of personal sensitivity if the defendant was acquitted. Information which is not material to the case is subject to the standard guidance on personal sensitivity regardless of whether or not the defendant was found guilty. Under the Sexual Offences (Amendment) Act 1992 the identity of victims of most sexual offences may not be released in their lifetime. This means that not only the name but any information which could lead to the identification of the victim must be withheld regardless of whether this information is in itself sensitive.

5 Information relating to victims of non-sexual violent crime may also be closed for their lifetime but only where the information is sensitive and its release would cause substantial distress.

6 Information relating to the victims of murder may be closed for the lifetime of their parents, siblings, spouse or children. This is most likely to be justified where the offence was committed within the family or had a personal element. Substantial distress is less likely to be caused by release of information obtained during the investigation of murder committed in the course of robbery or manslaughter by motorcar. Types of information likely to be severely distressing to the family are:

- Film or photographs of the deceased taken at the scene of the crime and photographs taken during *post mortem* investigations
- Graphic descriptions of what was done to the victim included in witness statements or *post mortem* reports
- Negative comments on the victim's character, family or domestic circumstances
- Evidence of illegitimacy or inheritable illness of the victim or their immediate family.

7 Suspicions, allegations and charges relating to serious violent or sexual crime which are not brought to court are likely to cause substantial distress and may be closed for the lifetime of the individual. This is because the allegations have not been in the public domain, have never been tested and may be untrue.

8 Confidential information relating to witnesses which is not discreditable should not be closed beyond 30 years. Discreditable information should be closed for the lifetime of the witness as its release would cause substantial distress.

9 Cases involving juveniles either as defendants, witnesses or victims need special care. When applying the test of substantial distress it should be recognised that it is likely that the case was not heard in open court, or that reporting restrictions were imposed. Even if matters were in the public domain the individual may have been too young at the time to understand them fully. For example, in cases of illegitimacy or incest, individuals may be distressed either to learn something about themselves or their family of which they were previously unaware or to have others come to know things about them which they themselves already knew.

10 Requests for access to closed files from those who are the subject of the file or related to the subject should be handled with caution, especially in the case of incest. It should be remembered that individuals may be given information about themselves but not about other people, even members of their own family, where this would identify them as victim of a sexual offence.

11 Where the applicant is a person whom the department is seeking to protect by closure of the file, the department should consider giving access in the presence of staff and friends who can give support. If the applicant is the only person being protected and they do not find the material distressing it may be opened with their agreement. Such agreement should be sought in writing after they have had the opportunity to reflect on the issues raised. If they are one of a number of individuals being protected, their views should be taken into account but they cannot be regarded as speaking on behalf of other members of the family.

12 Privileged access for academic research can usually be made subject to the condition that victims are not identified.

Appendix 4

Policy on release to the public of records concerning the interception of communications in the UK

1. The Advisory council has approved these guidelines for the opening of records derived from, or relating to, material intercepted in the UK. It relates to records of interception which pre-date the Interception of Communications Act 1985 created by all parts of government and the police. There are five sorts of records relating to interception generally: policy, targets, sources, product and methods. Where papers of the security and intelligence agencies are found on other departments' files they should be referred to the originating agency for its view on release. The policy and procedure in this appendix has been agreed by all parties in government with a direct interest in the interception of communications within the UK.

2. The Intelligence Services Act 1994 makes provision for the disclosure of the records of the three agencies, the Security Service, the Secret Intelligence Service and GCHQ, subject to and in accordance with the Public Records Act 1958 and 1967. The blanket retention of the records of the security and intelligence agencies was authorised by the Lord Chancellor in November 1992. Blanket retention has been dealt with in the main text at 5.4. Annual figures of warrants for interception granted by the Home Secretary should now be published in the reports of the Interception of Communications Commissioner. All of the surviving records of signals interception during the First World War and most of those from the Second World War are now available at The National Archives. The Cabinet, Chiefs of Staff, and Ministry of Information policy records relating to interception of signals and of mail under wartime conditions and the Defence Regulations have been generally available at The National Archives for many years. It can be assumed therefore that (with the exception of material on cryptographic techniques still restricted) wartime material generally should be released.

3. The interception of communications within the UK in peacetime is now avowed and so simple reference to it should be releasable at 30 years. In broad terms, general policy on targeting should be released at 30 years. The intelligence and law enforcement requirements to be met, and in the course of which interception techniques may be used, are set out in the Security Service Act 1989 (as amended), the Intelligence Services Act 1994, and in other legislation. Documents which reveal individual targets, sources, product or methods may have continuing security or intelligence vulnerability or enduring personal sensitivity. If so they should be dealt with by either

    - Continuing to retain them, under the blanket; such retention is permitted, it is not mandatory, and government policy as stated in *Open Government* is that all departments will keep their withheld records under review and will release them at the first opportunity

or

- Transferring them to The National Archives subject to extended closure, under one (or more) of the *Open Government* criteria. Both the target of the interception, and the personnel engaged in official interception could be vulnerable to endangerment from a third party. The release of the product of interception could result in substantial distress.

Postal interception may have resulted in the filing of objects, for example, gaming slips, obscene publications, forged documents of identity. These will usually be releasable whenever the main papers are released: they are very unlikely in themselves to have any sensitivity enduring longer than 30 years.

Appendix 5

Policy on declassification of papers of International Organisations on UK government files

1. Background

Where the records of government departments and agencies contain documents produced by international organisations, and those records are selected for permanent preservation at The National Archives, the consent of the international organisation is required before the documents can be transferred from the department and opened at The National Archives. The National Archives has contacted a number of international organisations, and consulted the Foreign and Commonwealth Office and the Cabinet Office. In relation to some of these records The National Archives has received permission to transfer and open their records under various conditions. Some organisations allow their records to be released without exception at 30 years. These are shown in paragraph 2 below. Some organisations allow UK declassification procedures to apply to their records, these are listed in paragraph 3. Those organisations which apply specific conditions to disclosure are listed in paragraph 4, and those for which no approval has been received are listed in paragraph 5. This guidance does not include international defence organisations, such as NATO or CENTO, which are subject to different arrangements as the originators reserve ownership of documents they issue, which therefore are not public records even when they are kept on UK government files.

2. International organisations whose records may be released without exception at 30 years

Departments should release documents produced by these international organisations at 30 years (and sometimes earlier) without reference to the international organisation or The National Archives.

- CAB International (Centre for Agriculture and Biosciences International)
- Commonwealth Telecommunications Organisation[6]
- International Confederation of Free Trade Unions[7]
- International Maritime Organization[8]
- International Olive Oil Council[9]
- International Sugar Council[10]
- International Sugar Organization
- OECD (Organisation for Economic Co-operation and Development)

[6] No CTO openable at 30 years. Apply usual declassification procedures when considering release between 10 and 30 years

[7] ICFTU archives open at 25 years, but for serious academic research, access is given at 2 years, and they state the same can be allowed by UK government departments

[8] The single IMO paper not openable at 30 years is the Secretary-General's contract of employment - all others are open from date of issue

[9] IOOC records may be opened after 5 years

[10] ISC was the predecessor organisation to ISO

- OEEC (Organisation for European Economic Development)[11]

3. International organisations which have agreed that departments apply UK declassification procedures to their records

Departments should treat documents produced by these international organisations as if they were UK government papers, and apply usual sensitivity criteria. If it is felt that a document needs to be referred back to the originator before release, The National Archives supplies contact details. In the case of the European Union and its predecessors (except EURATOM), the authority to treat their classified records according to member states' internal procedures originates from Chapter 2 Annex A of the Cabinet Office's *Security in Government Departments*, which states that further guidance may be obtained from the Security Division of the Cabinet Office.

- CETS (European Conference on Telecommunications by Satellite)
- ELDO (European Space Vehicle Launcher Development Organisation)
- ESRO (European Space Research Organisation)
- European Union; European Community; European Coal and Steel Community; European Economic Community[12]
- European Space Agency[13]
- European Space Conference
- International Atomic Energy Agency

4. International organisations where conditions apply to the declassification of their records

For these international organisations, there are varying conditions which apply to their documents, though many will be releasable. Departments request details of the most recent guidance from their National Archives Client Manager, who will also supply contact details if any papers need to be referred back to the originator.

- COCOM (Co-ordinating Committee for Multilateral Strategic Export Controls)
- Commonwealth
- Council of Europe
- Council of the European Community
- Council of the European Union[14]

[11] OEEC was succeeded by OECD in September 1961.

[12] The present European Union, and the predecessor European Community, consists of three separate economic communities - the European Economic Community, the European Coal and Steel Community and EURATOM. Of these, only EURATOM applies a conditional declassification regime to its records. For all the other European community organisations, member states have agreed to apply national declassification rules to classified documents found on their government files.

[13] ESA was the successor body to ESRO, ELDO, CETS and the European Space Conference.

[14] The Council of the European Union replaced the Council of the European Community in November 1993

- EFTA (European Free Trade Association)
- EURATOM
- FAO (Food and Agriculture Organization of the United Nations)[15]
- GATT (General Agreement on Tariffs and Trade)[16]
- International Civil Aviation Organisation[17]
- International Energy Agency
- International Monetary Fund
- INTELSAT (International Telecommunications Satellite Organization)
- World Meteorological Organization
- World Bank

5. International organisations where there is no approval to release their records

The National Archives has been in contact with these organisations which have either confirmed that their documents cannot be released or that they should all be referred to the international organisation before release, or they have not responded to The National Archives inquiries. The National Archives will renew contacts to see if the situation has altered where departments discover large numbers of documents produced by these international organisations on selected files. Where departments need to refer documents back to the originators, The National Archives supplies contact details.

- CERN (Centre for European Nuclear Research)
- INTERPOL (International Criminal Police Organization)
- WHO (World Health Organization)

6. Other bodies with an international dimension

Some bodies, not strictly speaking international organisations, produce records with a distinct international element, for which it is helpful to set out existing declassification guidance here. Departments must request details of the most recent guidance from their National Archives Client Manager, who will also supply contact details if any papers need to be referred back to the originator. In relation to the Ditchley Foundation and the Royal Institute for International Affairs (Chatham House), Appendix 6 in this manual should be consulted.

7. Other international organisations

If departments discover papers produced by other international organisations on their files which are selected for permanent preservation, they notify their National Archives Client Manager. The National Archives will then seek guidance and approval for declassification which can then be incorporated into future editions of this Appendix. The full text of the guidance received from international

[15] Most FAO documents, except for project reports, are already in the public domain
[16] GATT was succeeded by the World Trade Organisation in January 1995
[17] With the exception of papers marked 'confidential', most ICAO papers are releasable before 30 years, and most 'confidential' papers will in fact be declassified before they are 30 years old

organisations has been placed on the RM Forum website http://www.recordmanagers.gov.uk/.

Appendix 6

Policy on declassification of Royal Institute of International Affairs (Chatham House) and Ditchley Foundation Papers on UK government files

1 The Royal Institute of International Affairs (commonly referred to as Chatham House) and the Ditchley Foundation are both organisations which are independent of government. The records of these organisations are not public records but papers which find their way on to UK government files are, however, public records. The two organisations have agreed the following policy on the declassification of such records and the policy has been endorsed by the Advisory Council.

2 Both organisations exist to stimulate debate and research on key issues in the international arena by holding meetings attended by prominent figures. The proceedings are held in confidence, and there is a strict rule of no attribution of remarks made at the conference. This rule protects not only the identity of the contributor, but also any affiliations he or she may have. It is from this understanding that the sensitivity of their papers arises. Participants may report the information gained at the meetings but not the fact that the information was obtained at a meeting of the organisation.

3 Records of conference discussions or conclusions which observe the non-attribution rule, whether circulated to participants in confidence, or made publicly available, may be opened at 30 years. This is irrespective of whether the papers were produced as official final reports, or as the reports of working groups, or as the personal record of a participant. Where the non-attribution rule has not been observed, the papers should be closed for 40 years and re-reviewed thereafter. If ephemeral material in which the non-attribution rule has not been observed has found its way on to government files, unless it has become an important part of the file it may be removed and destroyed, and the file opened as usual at 30 years.

4 Records relating to arrangements for attending conferences and meetings, and briefings for them, not being the confidential views of the participants of meetings, should be generally opened at 30 years. Likewise, any internal administration and policy records of the Ditchley Foundation should be opened at 30 years. Policy and administration documents relating to Chatham House are considered to have special sensitivity and should be closed for 40 years and then re-reviewed.

Appendix 7

Guidance on the release of honours records

1 In June 1996 guidance was issued by the Historical and Records Section (HRS) of the Cabinet Office to Home Civil Service departments on the retention of records relating to honours. Similar guidance was prepared by the Foreign and Commonwealth Office (FCO) and by the Ministry of Defence (MOD) in respect of their honours records. Since then, there have been fundamental changes to the legislation relating to data protection which, together with the freedom of information legislation, make it appropriate to issue new, combined guidance.

2. The new guidance**,** which is for all departments, has been approved by the Head of the Home Civil Service, Head of the Diplomatic Service and the Permanent Under Secretary of the MOD. It has also been approved by the Lord Chancellor's Advisory Council on Public Records and by The National Archives.

3 **Purpose of the guidance**

Guidance is needed to ensure common policy and standards across all government departments, those at the centre and those with only a peripheral interest. Sensitivity of honours records arises from the information they contain which has been supplied in confidence by third parties (including original nominations and expert assessment) and its release could cause substantial distress to the individual concerned and to his/her family. This guidance is aimed in particular at departmental records reviewers but will also be of benefit to those who create and manage records.

4 **Definitions**

"Honours records" covers a wide range of information held in many different ways. For the purpose of this guidance, the records covered are those held on paper or electronically[18] relating to:

a) "*Policy"* - ie policy considerations behind the honours system itself, which might include records on honours policy, medals of all kinds, gallantry awards and related subjects

b) *"Individuals"* - ie records dealing with individual honours or gallantry awards (e.g. nomination files and collections of papers relating to assessment); and

c) *"The assessment process"* - the exchange of correspondence, for example between the Prime Minister and the Head of the Home

[18] Electronic records are those held in a database, within a departmental document management system, on a word processor or sent by e-mail. Records may be partly paper and partly electronic in which case both parts are necessary to form the whole record

Civil Service, that takes place before completion of the half-yearly and *ad hoc* Prime Minister's, Diplomatic Service and Overseas (DS&O) and Defence Services Lists, honorary awards and lists of gallantry awards.

5 **Principles**

In the past, there has been an understanding that honours records could be closed for a period of 75 years. This was questioned by the Lord Chancellor's Advisory Council on Public Records and in the Freedom of Information Act the period of exemption has been reduced to 60 years (though records could be considered for earlier release depending on the confidentiality of the information contained therein). In the light of this, the government departments involved in the honours process and The National Archives have agreed a set of principles governing the release of honours records. These principles are:

a) The extended closure of 60 years is restricted to individual meritorious honours and gallantry awards and the assessment of individuals for both; and

b) Most policy records relating to honours may be released at 30 years. In exceptional cases it might be appropriate to seek an extended closure for period longer than 30 years and if so this should be on the basis of the criteria in Annex C to the 1993 Open Government White Paper (which is reproduced at 4.3 in this guidance)

6. It is the responsibility of each department to implement procedures for managing honours records in accordance with statutory obligations. Most departments will have to retain and review only those papers relating to individuals. Some departments – including the Cabinet Office, 10 Downing Street, the FCO and the MOD – will also have "policy" and "assessment process" records to manage.

7. Detailed guidance on reviewing the various categories of honours records for release is shown at Annex A.

8 **Further guidance**

Further guidance on matters covered in this note may be obtained from the Cabinet Office (Ceremonial Secretariat), FCO, MOD and The National Archives.

ANNEX A

Reviewing Honours Records

1 This annex gives guidance to reviewers on the various categories of honours records which may be held by departments, the processes undertaken in the preparation of the honours lists and the review for release of such records. It cannot cover all types of documents which may be found on departmental files, but does include those most commonly found.

2 The list below shows the different categories of honours records and the processes which are undertaken in the preparation of:

i. **Honours lists**

The Cabinet Office submits all departmental recommendations for honours up through the Head of the Home Civil Service to the Prime Minister (the FCO and the MOD similarly put forward diplomatic and military lists). It is only this central submission (and those of the FCO and MOD) and the subsequent correspondence related to it that need be considered for transfer to The National Archives. It follows that most departments will not need to retain their essentially ephemeral honours list records.

ii. **Honorary awards**

The FCO is responsible for the consideration of honours made to non UK citizens for services to the UK. The records of the recommendations to the Honorary Awards Committee should be subject to the same criteria as for records at (i) above.

iii. **Lists of gallantry awards, military and civilian**

The MOD has sole responsibility for military gallantry awards. Details of the awards are published in the *London Gazette* with a full or abbreviated citation – when security considerations (e.g. for actions in Northern Ireland) dictate otherwise. The MOD usually expects to release more detailed papers about awards made at 30 years unless there are continuing security considerations that would give rise to a threat to the individual or his/her family or for operational reasons. Civilian gallantry awards are assessed by the Cabinet Office (Ceremonial Branch) including some which are made to military personnel. Again, full or abbreviated citations are published in the *London Gazette* at the time the award is made. Further papers relating to the assessment process, including those cases where no award is made, would be subject to the 60 years extended closure period. Departments other than the Cabinet Office and MOD who are

involved in the early stages of assessment should not normally retain their papers for longer than 10 years.

iv. **Political honours**

Some Prime Ministers recommend honours for political services. The responsibility for reviewing resultant records rests with 10 Downing Street (including the papers of the Political Honours Scrutiny Committee for which the Cabinet Office provides the Secretary). Records are covered by the 60 year extended closure period but could be considered for earlier release depending on the confidentiality of the information contained therein. Departments involved in the earlier stages of assessment should not normally retain their papers for longer than 10 years.

v. **Foreign awards for British citizens**

Awards are sometimes proposed for British citizens by foreign and certain Commonwealth governments. The Foreign Secretary administers the regulations on the acceptance and wearing of these, and makes recommendations to The Queen. The records should be covered by the 60 year extended closure period but could be considered for earlier release (or destruction) depending on the confidentiality of the information contained therein.

3 Policy related records

The presumption should be that most policy records will be released at the 30 year point. In cases of doubt the Cabinet Office would be willing to advise. Records of particular sensitivity where release would cause substantial distress to the individual concerned and to his/her family will need to be considered on a case-by-case basis for extended closure, in accordance with the criteria in Annex C to the Open Government White Paper.

4 Records relating to individuals considered on honours lists

Records relating to individuals who are considered for awards in honours lists and the assessment process they go through are covered by the 60-year exemption. However, these records could be considered for earlier release depending on the confidentiality of the information contained therein. These records will give details about individuals considered for awards, the confidential views of nominators, assessors and the individuals' own responses to offers of honours. The records in this category if released would have the potential to give rise to substantial distress to the individual, his or her family and the assessors.

5. The majority of records relating to individuals, however, should be regarded as ephemeral and should not be required, for administrative purposes, for anything like as long as 60 years. Passing reference to honours, or to individuals who may be recommended for honours, amongst correspondence on other matters should be treated on their merits. If anodyne or complimentary they need not be withheld even if the honour to which they related was never conferred. If uncomplimentary or derogatory and/or the honour was never conferred, they may be recommended for closure on grounds of personal sensitivity or under the "in confidence" criterion. As a general rule of thumb nomination papers can be destroyed after five years.

6. Files wholly relating to honours in respect of one or more individuals are covered by the 60 year extended closure period but could be considered for earlier release depending on the confidentiality of the information contained therein.

7. Honours-related records held on departmental files

In general, papers found on departmental files in the following categories may be appropriate for closure for 60 years under Section 5(1) of the Public Records Act 1958:

i. Formal recommendations for awards

ii. Correspondence regarding details of merits of individual awards

iii. Negative replies to recommendations

iv. Correspondence dealing with recipients who think their awards are not high enough, or dispute levels between theirs and others and threats to send decorations back

8. Papers on departmental files, covering the following categories, if preserved, may be released at 30 years:

i. Notification of acceptance of recommendation

ii. Notification to recipient

iii. Details of certificate/medals/ribbons to be supplied or replaced and of award ceremonies

iv. Correspondence regarding publication of gazette notices

v. Awards for state visits

vi. Citation for gallantry awards

Appendix 8

Guidance on the release of records relating to the sovereign and the royal household

Introduction

1. In June 1994 guidance was issued by the Historical and Records Section (HRS) of the Cabinet Office to government departments on the release of records relating to the Royal Family following the publication of the White Paper on Open Government (CM 2290) published in July 1993 and the Code of Practice on Access to Government Information, published in April 1994. Since then, there have been fundamental changes to the legislation relating to data protection which, together with the Freedom of Information (FOI) Act 2000, make it appropriate to issue new guidance.

2. The purpose of this guidance is to advise reviewers on when it is - and when it is not appropriate to release records relating to the Royal Family. The guidance is in accordance with the statutory obligations, placed upon Government departments, by the Public Records Acts and other relevant statutory and non-statutory requirements. It is also drafted with regard to the general principles of the FOI Act.

3. This guidance, which is for use by all departments, has been agreed by the Royal Household, the Head of the Home Civil Service and The National Archives. It has also been endorsed by the Lord Chancellor's Advisory Council on Public Records.

Context of the guidance

4. Prior to the Freedom of Information Act 2000 being implemented, the White Paper on Open Government contained policy on access to public records. This states in paragraph 9.22 that:

   "Records relating to the Royal Family will be treated in the same way as all other records and only closed for longer than 30 years if they fall into one or more of the criteria governing closure."

5. The criteria governing closure are set out in paragraphs 9.13, 9.15 and 9.17 of the 1993 Open Government White Paper and in Annex C to that document which is reproduced at Table 1 in chapter 4 of this manual. They allow records to be closed for longer than 30 years if actual damage would be caused by their release and if the damage falls into the criteria set out below:

   i. "Exceptionally sensitive records containing information, the disclosure of which would not be in the public interest in that it would harm defence, international relations, national security

(including the maintenance of law and order) or the economic interests of the UK and its dependent territories"

ii. "Documents containing information supplied in confidence the disclosure of which would or might constitute a breach of good faith"

iii. "Documents containing information about individuals, the disclosure of which would cause either substantial distress or endangerment from a third party to persons affected by disclosure or their descendents"

Guidance on what may/may not be released

6. Records may be released at 30 years **unless** they meet any of the criteria in paragraph 5. The National Archives provides advice on the application of the criteria. Where records do meet the criteria an application should be made for their extended closure. The Advisory Council on Public Records will then take a view on the merits of the application and advise the Lord Chancellor accordingly. Where they do not meet the criteria, the records must be released. The application should initially be for a period no longer than 10 years, the papers should then be re-reviewed to see if there are any continuing sensitivities. If there are, a new application should be made for a further period, again for no longer than 10 years.

7. The remainder of this guidance seeks to provide reviewers with more detailed advice on what may/may not be released. At the outset, it should be noted that records reflecting customary official business between Her Majesty's Government and the Palace will usually be suitable for release after 30 years.

Direct communications between members of the Royal Family and Government Ministers

8. The Sovereign's views are given to Ministers on a confidential basis, but, unlike Ministers, the Sovereign remains in office for life, so that the sensitivity of those views subsists for the lifetime of the Sovereign. Consequently, communications between the Sovereign and Government Ministers - including those between their respective Private Secretaries - which refer to the Sovereign's views on a personality or on a matter which may cause controversy, and where such views are not already in the public domain, should be the subject of extended closure under the second criterion (paragraph 5(ii)) and closed for 40 years or until the death of the Sovereign whichever is later. Records relating to Ministerial audiences of the Sovereign should also be closed for 40 years or until the death of the Sovereign whichever is later.

9. Communications between the heir to the throne and Government Ministers - including those between their respective Private Secretaries

- which refer to the heir's views on a personality or on a matter which may cause controversy, and where such views are not already in the public domain, should be treated similarly to those between the Sovereign and Government Ministers, as described in paragraph 8.

10. Communications between all other members of the Royal Family and Government Ministers should not be treated exceptionally and the normal rules on release at 30 years and extended closure apply.

Papers concerning the personal affairs (including financial and property matters) of the Sovereign or other members of the Royal Family and papers relating to the demise of the Crown

11. The same criteria for closure apply to personal information relating to members of the Royal Family as for other individuals. (In essence this means that records which contain distinctly personal information may need to be considered under the existing closure criteria but that records which relate to policy or procedure should generally be releasable at 30 years.)

Direct correspondence between the Sovereign and Governors General

12. This correspondence concerns matters which are not the business of the British Government and applications for closure for 50 years should be made on the basis of the second criterion (paragraph 5(ii)). This closure period accords with Her Majesty the Queen's expressed wishes in respect of parallel papers in the Royal Archives.

Records of appointments of Governor Generals

13. Information about candidates for posts of Governor General is frequently published or otherwise already in the public domain. Extended closure should be sought only in instances where the record includes information about individuals the disclosure of which would cause substantial distress. Applications for extended closure should therefore be made under the third criterion (paragraph 5(iii)).

Royal Tours

14. Reports on Royal Tours abroad are normally releasable at 30 years.

Papers concerning arrangements for guests or their spouses to be entertained at the Palace

15. There is normally no barrier to the release of papers concerning arrangements for guests or their spouses to be entertained at the Palace. However, papers relating to the personal views of the host (ess) on the personality concerned should not be released if they contain information about individuals, the disclosure of which would cause substantial distress. Applications for extended closure should be

made under the third criterion (paragraph 5(iii)).

Papers relating to the briefing of the Sovereign

16. Records of briefings or records about members of other Royal Families, should only be the subject of extended closure if their release would harm international relations or cause substantial distress. Applications for extended closure should be made under either the first or the third criterion (paragraph 5(iii)).

Further guidance

17. Further guidance on matters covered in this note may be obtained from the Cabinet Office or The National Archives.

Cabinet Office / The National Archives
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