



The National Archives

Report on the consultation exercise undertaken as part of the review of the records management code of practice issued under section 46 of the Freedom of Information Act 2000

July 2007

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Report on the consultation exercise undertaken as part of the review of the records management code of practice issued under section 46 of the FOI Act

1 Summary of findings

The responses to the request for comments on the present code and suggestions for how it should be amended show that there is an appetite within the information management community for revising the code to reflect the changes that have occurred in the information world since it was drafted some eight years ago. Perhaps understandably, the views presented differ in some respects but there are many areas of consensus and it is possible to see a way forward.

The National Archives started the consultation with some assumptions of its own as to changes that needed to be made:

- Update the content relating to electronic records and integrate it with recommended good practice for other record formats
- Streamline the code to clarify and simplify its provisions by strengthening the focus on principles and outcomes and reducing process-level detail
- Make clearer the code's relevance to compliance with other information legislation and policy, such as data protection, data sharing and re-use

The assumptions were, in general, endorsed and the recommendations in section 5, therefore, contain them and also others resulting from the consultation responses and internal workshops.

This report is intended primarily for members of the working groups set up to work with The National Archives on revising the code of practice. Its purpose is to inform them of the outcome of the review stage and to act as a basis for the further work of revising the text of the code.

2 Background

When the code was issued in November 2002 it was on the basis that it would be reviewed and, if necessary, revised five years after publication. With the approval of Ministers a review was initiated in February 2007 when members of the information and records community were invited, through letters and publicity, to send comments on the present text of the code and suggestions for its amendment. A list of those who sent responses is at Annex A and their responses are brought together in a table at Annex B. This table includes comments and suggestions provided by staff of The National Archives in a series of internal workshops. The identity of those who supplied the

comments has been withheld to prevent unconscious weighting of comments by source.

3 Analysis of responses - Foreword, Introduction and Part 1 of the code of practice

Many specific comments and suggestions for how the text should be amended were received; they can be seen in the table at Annex B. Comments specific to Part 2 are analysed at section 4.

3.1 Certain common threads have emerged:

- **Structure** - the text dealing with electronic records should be integrated with the rest of Part 1 and expanded, for example to cover email and other structured forms of electronic record, such as datasets and Geographical Information Systems; digital storage and preservation options; technical issues such as viruses, hybrid systems, scanning, the risk of obsolescence; metadata; encrypted information and audit trails etc. It was also suggested that sections 8 (Active Records Management) and 9 (Disposal Arrangements) be re-structured and that there should be more bullet points and checklists instead of long text paragraphs
- **Scope** - the code should deal with information management, not just records management, and should cover all media and formats (but see section 5 of this report)
- **Role of records management** - the importance of records management and the benefits of conforming to the code should be explained more clearly, preferably near the start. The emphasis should be on managing and disposing of records for business purposes, not as potential archives. There should also be more emphasis on risk management and business continuity.
- **Related legislation** - the connection to other information legislation and elements of the regulatory environment should be strengthened.
- **Other standards** - there should also be a closer link to the relevant British Standard BS 15489 Records management. It would be useful in particular to refer to the characteristics of records at paragraph 7.2 of the Standard, namely authenticity, reliability, integrity and usability. There should also be references to specific standards, e.g. on metadata (ISO 23081), storage and information security (ISO 17799)
- **New ways of working** - the implications of data sharing, partnership working and shared services should be covered. The work of the Knowledge Council should also be kept under review for relevance to the code
- **Devolved responsibilities** - responsibilities for records management within an organisation should be clarified, taking account of the implications of devolved record keeping and of likely differences between large and small organisations. This affects sections 5 (Functional Responsibility) and 7 (Human Resources) in particular

- Foreword and Introduction - there is a lot of duplication between and within the Foreword and the Introduction. It was suggested that the emphasis should be on the code not FOI generally
- Closing records, i.e. freezing their contents – the text at paragraph 9.2 of the code does not work for records that are not paper files. However, the concept of ‘historical records’ in the Act depends on records being closed in this way so something must be included to ensure that records do not remain open, in the sense that content can continue to be added, indefinitely. One option might be to require triggers to be identified for closure of particular types of records, e.g. conclusion of action on a financial year for financial records
- Appraisal and disposal - appraisal, disposal and destruction of electronic records raise different issues, including in terms of what constitutes destruction. It was also suggested that the benefits of disposal schedules for effective management of records should be emphasised. Section 9.9 (about delaying destruction if a record is known to be the subject of a request for information) presents problems and should be reviewed; if it is retained, litigation should be referred to also
- Audit trails - the information required for an audit trail should be explained with an indication of what audit log data can be discarded and what should be retained in the long-term
- Performance management – the information required for performance / compliance assessment should be outlined.

3.2 Matters on which differing views were expressed are:

- Level of detail – some respondents supported a focus on principles and outcomes, others suggested including process-level detail also but separately, and one expressed concern that dilution of detail would be counter-productive and reduce the prospects of compliance. Several respondents suggested aspects on which more detail was required, e.g. metadata, others identified parts where prescriptive text should be removed
- Terminology – many respondents thought that the language of the code should be less technical and definitions should be included. Against that, others said that terms used in BS 15489 (the records management standard), which tend to be technical, should be used. Several respondents wanted the term ‘record keeping’ avoided and some suggested that the terms ‘physical record’ and ‘logical record’ should be explained and used throughout.
- Knowledge and skills – the knowledge and skills required of those responsible for records and information management and how it should be expressed in the code. Some wanted an emphasis on specialist skills and knowledge but others thought the code should not be too prescriptive
- File plans or business classification schemes – some respondents considered their importance should be emphasised. An alternative view was that file plans and BCS are one way of providing effective

management of disposal, access and security, as well as a contextual framework, but might diminish in importance in future as alternatives emerged.

- Records or information surveys – some respondents considered there should be greater recognition of the importance of surveys and of the need to update them, while another suggested business analysis as an alternative approach. Another view was that surveys were a means to an end, i.e. knowledge of what information was held, where it was, how it was used and for how long it should be kept, and the focus should be on that end with surveys as one means of achieving it.
- Policy statement – one respondent questioned the usefulness of a policy statement for records management, preferring a strategy, but the majority favoured inclusion of this requirement. One option would be to require a records management policy but not necessarily a separate policy statement, which would leave it open to include records management policy within a wider information management policy statement, and also to cross refer to related policies, e.g. on information security. There were also differing views on whether the code should specify when the policy should be reviewed, although the need to review it was not challenged.

3.3 Issues which require further consideration include:

- Relationships - how the relationship between the FOIA s 46 code and codes produced by or for particular sectors should be expressed and how, if at all, the code should relate to or reflect the relevant British Standard on records management, BS 15489
- Record format - whether the code should be format-neutral or should deal explicitly with the differing requirements of different formats, in particular logical as opposed to physical records. Format-based examples illustrating general points might be an acceptable way forward
- Level of detail – how much process-level detail, and how much detail that is specific to a particular format or that explains a particular requirement, should be included. The revision needs to start with agreement on a general approach and how the code relates to supporting guidance
- Future-proofing - whether the code should reflect current recommended practice or what seems likely to emerge in future. For example, work is being undertaken on re-defining the term 'record' in the light of websites, wikis, and other instances of the breakdown of a clear distinction between records and other types of information. There is also a discernible trend away from file plans towards use of metadata to provide context and linkages. The issue is how far this should be reflected in the code and whether it is possible to future-proof the code while still keeping it useful
- Terminology - whether there should be a glossary, as in the Scottish code, or whether technical terms should be explained in context if they cannot be avoided altogether

- Closed (frozen) records - when does a record held electronically count as 'closed' and how can the concept of closed records (on which the concept of 'historical record' at FOIA s 62 depends) be applied to databases and workflow systems
- Destruction - what constitutes destruction of an electronic record and what sort of records of destruction should be kept and for how long? (This has emerged as an issue in decisions of the Information Commissioner and Information Tribunal.)

4 Analysis of responses – Part 2 of the code of practice

4.1 The following common threads emerged in the comments received:

- Foreword and Part 2 - the respective roles of the Advisory Council on National Records and Archives and the Ministry of Justice Clearing House should be made clear.
- Electronic records - procedures for access review and redaction of electronic public records at the time of transfer to an archives office should be expanded upon. The challenge of sensitivity review of electronic records and early transfer to an archives service should be acknowledged, although detailed recommendations would be premature and restrict development of new solutions
- Terminology - the revised code should explain the terms 'responsible authority' and 'records authority'
- Northern Ireland - different timescales continue to apply in Northern Ireland; this should be made clear
- Consultation - the revised code should emphasise the importance of consultation during sensitivity review. This applies especially where material was generated outside the department or is within records that have been inherited, usually following Machinery of Government changes
- Other guidance - the revised code should refer to the Access Manual (revised) as a relevant standard

4.2 Issues which require further consideration include:

- Retention of records - the criteria for retention of records under PRA section 3(4) or PRA(NI) section 3(d) come from the Open Government White Paper, which is otherwise superseded, and could be reviewed as part of this work. Consideration should be given to whether similar criteria will be required for digital records that should not be transferred early, e.g. classified material
- Exemptions - whether the revised code should provide more information about applying exemptions to withhold records, including which exemptions cannot be applied to records over 30 years old

- Terminology - whether relevant terminology should be explained, including terms defined in the Act

5 Limitations on this revision of the code of practice

Notwithstanding the responses, there are some things this review and revision of the code cannot do:

- The revision cannot make the code mandatory. This is because section 46 of the FOI Act does not provide for it to be mandatory. The code will remain a statement of recommended good practice
- The Lord Chancellor cannot be asked to issue a code of practice on information management. This is because section 46(1) of the Act specifies the scope of the code as *'the practice which it would, in his opinion, be desirable to follow in connection with the keeping, management and destruction of their records'*. The effect of this that information management can be covered only insofar as it can be shown to be to 'in connection with the keeping, management and destruction of their records'
- The revised code cannot provide detailed guidance on matters outside its scope, e.g.
 - It cannot not advise on which exemptions should be used or not used in particular circumstances
 - It cannot deal with matters that fall within the scope of the code of practice under section 45 of the Act
 - It cannot set out requirements for the review and transfer of records that are not public records. This is because section 46(2) of the Act specifies the scope of this part of the code as *'records which are public records'*. (But note that it is open to bodies that are not public record bodies to adopt the practice set out in Part 2 voluntarily)
- The revised code cannot disregard the provision of other legislation. For example, although the Public Record Office is rarely mentioned nowadays because its functions have been subsumed in those of The National Archives, nonetheless the Public Record Office remains the relevant legal entity and should be cited within the code, with a footnote to explain that the Public Record Office operates from within The National Archives. Similarly, the Keeper of Public Records should continue to be cited although the occupant of that office is usually referred to as the chief executive of The National Archives. A footnote can explain the position. The same applies to the Deputy Keeper of Records of Northern Ireland / Director of the Public Record Office of Northern Ireland
- The revised code will not tell organisations how to design and implement an EDRMS. This is because detailed guidance of this nature is more appropriate to supporting guidance.

There are, however, many things this revision of the code can do and our intention is to maximise the opportunities presented by provision for the code within the FOI Act.

6 Recommendations for revision of the code of practice

The following recommendations are made:

- 1 The revised code should integrate coverage of records in all formats
- 2 Although there are limits to the extent to which the revised code can address information management, because of the wording of section 46 of the Act, an information management context should be provided wherever possible
- 3 The revised code should focus on principles and outcomes but include some detail as illustrative examples. The balance of inclusion/exclusion of detail should be kept under review in recognition of the fact that the code needs to remain useful and capable of assessment of conformance
- 4 While format-based differences will, as far as possible, be addressed in the illustrative examples, there may be some occasions when the needs of a particular format will be so different that the preferable option would be to consolidate them in a separate paragraph. A flexible approach should be taken therefore.
- 5 Recommended practice should not be too prescriptive so that different means of achieving the same objective can be accommodated
- 6 Reference should be made to relevant standards issued by BSI and others
- 7 There should be a clearer connection to the requirements of other information legislation and how the code can support it, with cross references as applicable to the provision of the Data Protection Act and Environmental Information Regulations in particular
- 8 The text about the benefits of good records management and the risks arising from poor practice should be strengthened. Records management should be linked more explicitly to the business needs of the organisation
- 9 As far as possible the revised code should be future-proofed
- 10 Terminology should be kept under review. Technical terms should be used only when really necessary and should be explained, either in context or in a glossary. The need for glossary should be reviewed on completion of re-drafting.
- 11 The particular issues presented by data sharing, partnership working and shared services should be addressed

- 12 The work of the Knowledge Council should be kept under review to ensure that the revised code benefits from research undertaken under its auspices
- 13 The revised text should be checked against the annexed set of responses to ensure that none has been overlooked. (Note that this is not an undertaking to accept all the comments and suggested amendments but to ensure that they have been considered.)

7 Next steps

As a first step, members of the working groups are asked to consider the contents of this report and provide comments to the appropriate TNA chair – Susan Healy for part 1 (susan.healy@nationalarchives.gov.uk) and Stuart Abraham for Part 2 (stuart.abraham@nationalarchives.gov.uk).

Drafting will be undertaken by Susan Healy and Stuart Abraham on the basis of this report and any comments received. Revised drafts will then be circulated to members of the working groups for comments.

Susan Healy
26 June 2007

ANNEX A LIST OF RESPONDENTS

ACPO
Alan Shipman
Alex Hodge
Alison Ross-Dow
Birmingham City Council
Coal Authority
Derbyshire County Council
GCHQ
Graham Rowlinson (DTI)
Highways Agency
Home Office HQ
Keith Batchelor
Manchester records managers (through Alex Hodge)
Ministry of Defence
Northern Ireland Office
Public Record Office of Northern Ireland
SIS
Society of Archivists
Steve Bailey
Susan Graham