

GUIDANCE TO DEPARTMENTS ON THE USE OF PRIVATE EMAIL

1. Government information must be handled in accordance with the requirements of the law, including the Official Secrets Act, Freedom Of Information Act (FOIA), Data Protection Act and Public Records Act.
2. There is a wide range of communication tools both formal and informal. This guidance principally deals with emails but it applies equally to other forms of communications and records which deal with departmental business. It should be read in conjunction with the Information Commissioner's guidance on "*Holding Information: Official information held in private email accounts*".
3. It is aimed at addressing issues, common to all departments, which have arisen through the growth in the use of emails in conducting departmental business.

Management and storage of records

4. Departments should adhere to the Lord Chancellor's Code of Practice on the management of records and departmental records management procedures found at <http://www.nationalarchives.gov.uk/information-management/projects-and-work/records-management-code.htm>. Departmental Records officers can advise further on the requirements for maintaining public records. The responsibility for deciding whether emails should be retained rests with the originator and recipient. In general terms, a record need only be retained if it is needed for substantive discussions or decisions in the course of conducting official business. Multiple copies of the same record should be avoided as they burden record stores. Ephemeral or trivial emails need not be retained even if generated in the course of conducting Government business, and should be deleted on a routine basis.

Use of Government email systems for non-Government business

5. Many departments allow staff to make reasonable use of electronic communications such as departmental email for personal purposes. Emails of a solely personal nature should not be retained as part of the Government record. The information contained in them is not considered to be held by departments for the purposes of the FOIA.
6. Ministers and special advisers may conduct political activity in support of Government business. Whether information on such activity is held by Government for the purposes of FOIA will depend on the content and context. Non-government information which amounts to constituency or political business is not considered to be held by departments for the purposes of FOIA. MPs and Peers conducting business in their capacity as parliamentarians are not public authorities for the purposes of FOIA.

Use of non-Government email systems for Government business

7. Civil servants and Ministers are generally provided with access to Government email systems. Other forms of electronic communication may be used in the course of conducting Government business. Departments' security policies will apply when generating and communicating information. The originator or recipient of a communication should consider whether the information contained in it is substantive discussions or decisions generated in the course of conducting Government business

and, if so, take steps to ensure the relevant information is accessible (e.g. by copying it to a government email address)

8. The decision about whether information was generated in the course of conducting Government business cannot always be clear cut. No single factor will determine whether information amounts to government information as opposed to for example personal or political information. It will be important to consider the relevant circumstances and in doing so, it may be helpful to bear in mind the following factors:
 - a. Who are the originator and recipients of the information? This will not necessarily be determinative but if, for example, the sender and recipients are civil servants then this might suggest that the email amounts to Government business.
 - b. In what capacity were the originator or recipients acting? For example, Ministers can act in several different capacities – as members of the Government, as constituency MPs, and as members of a political party.
 - c. What function was the information being provided for? For example, was it to inform a substantive policy discussion or a particular decision and if so, what was the nature of that discussion or decision? Was the information being generated directly to inform or influence the development or implementation of departmental policy or the operation of the department? Should the information form part of the public record? An exchange which mentions a department's policy area (e.g. commenting, expressing views, or discussing wider political ramifications) does not necessarily amount to Government's official business. However, if it was intended that the department would use or act on the information in the course of conducting its business that may well point to the information being Government information.

The Freedom of Information Act and searches for information

9. The FoI Act allows people to request information; it does not give the requestor any power to dictate where the department should search for that information. It is for the department to consider where the information might be and to take reasonable steps to find it. As set out above, it is expected that Government business should be recorded on government record systems. It will generally be reasonable to search only within those systems when a request has been received.
10. Departmental searches in response to requests for information are the responsibility of individual departments. The FOI Act itself provides no express legal authority for departments to search another person's private emails or other records for the purpose of responding to a request made under that Act. In exceptional circumstances, it may be necessary to ascertain whether there is Government information in an individual's possession that is not accessible to Government. This should be done by approaching the individual in question and the department should be entitled to rely on that person's answer. There would be no requirement on the department to inform the requestor that the question had been asked, or (if Government information had been privately stored) where any information was found though, as now, if the Information Commissioner's

office is involved, departments may be asked to explain the nature and extent of the searches conducted in order to reply to a request.

CABINET OFFICE

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