

RECORDS REVIEW

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RECORDS REVIEW: REPORT

Introduction

1. I was asked by the Cabinet Secretary on 18 March to carry out a review to establish the position across Government on the annual release of papers; the ability and readiness of departments to meet the requirements of moving from a 30 to a 20 year rule; and the processes for withholding information where release would harm individuals or the national interest. My full terms of reference are attached as Annex 1.
2. The review was commissioned by the Prime Minister following the investigation into the publication in January 2014 of material from two documents released by the Cabinet Office under the Public Records Act relating to the Indian operation at Sri Harmandir Sahib—also called the Golden Temple—in Amritsar in June 1984. The review was announced in the House of Commons by the Foreign Secretary on 4 February 2014. Although the genesis of the review was the release of the Amritsar papers, the issues I was asked to investigate go much wider.
3. My review has covered UK government departments. It has not covered records that are the responsibility of the Scottish, Welsh or Northern Ireland governments. Nor has it covered the intelligence agencies.
4. I am very grateful for the tireless support provided by Trish Humphries and Sam Whaley at the National Archives and for the help provided by Roger Smethurst at the Cabinet Office.

The Public Records Act, the Freedom of Information Act, and the Constitutional Reform and Governance Act

5. The legal basis for the release of official records is set out in the Public Records Act 1958 (as amended by the Public Records Act 1967), the Freedom of Information Act 2000 and the Constitutional Reform and Governance Act 2010. The Lord Chancellor has issued a Code of Practice under S46 of the Freedom of Information Act which sets out the procedures which departments and others should follow in relation to the creation, keeping, management and destruction of their records, and the arrangements they should follow in reviewing public records and transferring them to The National Archives. Annex 2 provides a fuller account of the processes and the roles of departments and The National Archives.
6. Before the introduction of the Freedom of Information Act, government records were generally not available for public access until they were over 30 years old and were transferred to The National Archives – the “30 year rule”. Under the Freedom of Information Act any record, whatever its date, must now be released on request unless its content falls under one or more of the exemptions under the

Act. Records over 30 years old became “historical records” for the purposes of the Freedom of Information Act, and certain of the exemptions dropped away. Departments are required to work with The National Archives to appraise their records and select those that are of historical value. Records that are not of historical value are destroyed. Departments carry out sensitivity reviews of those records that are of historical value so as to identify records that:

- Should be retained by the department because they are too sensitive to be transferred to The National Archives (primarily because of continuing high security classification) or because they are still needed for operational use within the department (e.g. building records or records of staff still employed)
- Are still subject to continuing exemptions under the Freedom of Information Act and should be transferred to The National Archive as closed records, not accessible to the public
- Should be transferred to The National Archive as open records, accessible to anyone, since no Freedom of Information Act exemptions apply

7. All records, whether retained by departments or transferred closed to The National Archives are still subject to Freedom of Information requests, and it is up to the department and/or TNA to justify why an exemption applies.

8. The changes introduced by the Constitutional Reform and Governance Act followed a review chaired by Paul Dacre which had recommended a reduction in the 30 year rule. The Act changed the 30 year rule to a 20 year one, so that records would normally be transferred to The National Archives 20 years after they were created rather than 30 years. The Freedom of Information Act exemptions were similarly modified so that records became “historical” after 20 rather than 30 years. A transitional timetable was set out, so that departments would release two years of records each year over a 10 year transition, as shown in the table below.

Year	Transferring under 20-year rule transition
2012	1982
2013	TRANSITION BEGINS 1983 and 1984
2014	1985 and 1986
2015	1987 and 1988
2016	1989 and 1990
2017	1991 and 1992
2018	1993 and 1994

Year	Transferring under 20-year rule transition
2019	1995 and 1996
2020	1997 and 1998
2021	1999 and 2000
2022	2001 and 2002
2023	TRANSITION ENDS 2003

9. As the timetable shows, departments were supposed to begin the transition in 2013, transferring files from 1983 and 1984 that year, and to transfer files from 1985 and 1986 this year.

Records Management Within Departments

10. The transfer of files to The National Archives comes at the end of the process of managing records within departments. Departments are responsible for the management, safe-keeping and destruction of their records, and for the review and selection of records for permanent preservation and their eventual transfer to The National Archives (TNA). Guidance is provided in the Lord Chancellor's Code of Practice, mentioned above, with further advice and guidance provided by TNA. The Chief Executive of TNA (the Keeper of Public Records) is responsible for co-ordinating and supervising the processes.

Information Management Assessments

11. On information management generally, The National Archives had in the past sometimes seemed a relatively passive recipient of records transferred from government departments, issuing guidance but with limited direct engagement. But in recent years it has become much more pro-active in promoting best practice in records management, and engaging closely with departments.
12. As part of this, it has developed a programme of Information Management Assessments of government departments and agencies. These were launched in 2007 and focus on gaining a clear picture of an organisation's policies, processes and practices. They examine five key areas:
- the value of information
 - the technology environment
 - information policies and performance monitoring
 - management of risk
 - records review, selection and transfer

13. The programme aims to support and encourage organisations to review their own capability in relation to information management practice and processes. The process involves on site visits, scrutiny of documentation, a published report and further follow up. The reports assess departments' capabilities on such issues as governance and leadership, information and records management, compliance, and culture, until recently measuring these on a red/amber/green scale. They have highlighted examples of best practice, but also brought out areas where improvements are needed. They are followed up with an action plan agreed with the department.
14. Information Management Assessments are voluntary for departments. Almost all have agreed to let TNA undertake one: the reports and action plans can be found at <http://www.nationalarchives.gov.uk/information-management/manage-information/ima/ima-reports-action-plans/>. I regard IMAs as a valuable but under-publicised tool. I recommend that all departments should be required to undertake one, and to commit to the programme of action plans and review, and that the outcomes should as a matter of routine be reported to departmental Boards and where appropriate added to departmental risk registers where that is not already done. TNA should set out a schedule for the future programme of reviews, and if necessary allocate additional resources to support them. I recommend that TNA should, where they have cause for concern about a particular department's records management performance, be given the authority to undertake an unscheduled audit. I also recommend that TNA should publish a summary bringing out the lessons learned from IMAs, highlighting examples of best practice and common areas where improvements are needed, wherever possible based on objective measurement and metrics.

Accountability

15. This brings me to the issue of responsibility and accountability for record management. TNA is a non-ministerial department, under the umbrella of the Lord Chancellor. The Chief Executive has the formal title Keeper of Public Records and is TNA's accounting officer. Section 3 of the Public Records Act says:

“It shall be the duty of every person responsible for public records of any description ... to make arrangements for the selection of those records which ought to be permanently preserved and for their safe-keeping.”

“Every person shall perform his duties under this section under the guidance of the Keeper of Public Records and the said Keeper shall be responsible for co-ordinating and supervising all action taken under this section.”
16. This clearly places the duties on individuals in departments, co-ordinated and supervised by TNA. Many of the recommendations I make are aimed at building up the traction and levers of the Keeper and his staff at TNA. But I believe TNA needs higher-level backup within Whitehall. It is notable that the great bulk of

TNA's communications with departments take the form of what is in effect voluntary guidance. This raises the question who would be in a position to require all departments to undertake IMAs or indeed to take action with those who do not follow guidance on destruction of records or are behind on meeting the 30 to 20 year transition timetable, as discussed below. It could be argued that the Cabinet Office has some responsibility for cross-departmental functions and so should take on this role. But I think it makes more sense for it to be a responsibility of the Ministry of Justice to support the Keeper in ensuring good records management policies are followed across government, and that is what I recommend. MoJ is the department which supports the Lord Chancellor in his ministerial role, and has cross-departmental responsibilities for freedom of information and data protection. MoJ's support for TNA should where necessary include securing the backing of the Lord Chancellor and his colleagues in the department to add Ministerial "weight" to the TNA's dealings with other departments.

17. To ensure that high-level attention is paid to records management issues, I recommend that the Keeper should be invited annually to attend a meeting of Permanent Secretaries and to make a presentation on departmental performance on records management and on issues of concern, including progress on meeting the 30 to 20 year transition. Departments should also be required to report on whether they are meeting information management standards in their annual departmental reports. The MoJ's Permanent Secretary should help reinforce TNA messages amongst Permanent Secretaries on a more regular basis.

Progress on Transition from 30 to 20 Year Rule

18. I wrote to all departments asking for information about where they stood in relation to the timetable for moving from a 30 to a 20 year rule and whether they had sufficient resources to adhere to the timetable. Annex 3 attached summarises departments' replies. I followed up my letter with individual meetings with the key departments: the Cabinet Office; the Foreign and Commonwealth Office; the Ministry of Defence; the Home Office; and the Ministry of Justice.
19. The responses from departments were supplemented by data provided to TNA for their Record Transfer Reports. These are published every six months and show the numbers of records due for transfer or destruction the previous year and now overdue; and the numbers of records due for transfer or destruction in the current year or next year. The latest RTR, published in June this year is at <http://www.nationalarchives.gov.uk/documents/record-transfer-report-spring-2014.xls>
20. Superficially, the position shown by departments' responses to my letter is reasonably promising. Most departments say they are on track to meet the transition timetable. But this does not address a number of problems, illustrated in the RTR. Several departments have large backlogs of legacy files that haven't yet been appraised, most notably FCO but also MoD and to a lesser extent the

Treasury, Cabinet Office and Defra, plus HMRC. DCMS holds at least 45000 files for which it doesn't know the dates. Other departments are not yet meeting the transition timetable, though say they will later in the period – BIS/DECC and DCLG. I attach an annex giving more detail about individual departments. The summary position is:

Cabinet Office

The Cabinet Office is largely on track against the transition timetable. It has a backlog of 1500 records which it aims to clear by the end of 2014.

Crown Prosecution Service

The CPS has a backlog of files from 1978 to 1984 which it aims to transfer to TNA by March 2015. But it has not transferred any files since 2009 and there are some concerns about its abilities to meet the timetable.

Department for Business, Innovation and Skills (BIS)

BIS has a backlog of 600 files overdue for appraisal or destruction and 3000 files selected for preservation that are overdue for transfer. BIS is gradually reducing the backlog but is not yet meeting the transition timetable.

Department for Communities and Local Government (DCLG)

DCLG has a backlog of 300 files overdue for appraisal or destruction. It says it will be meeting the transition timetable from 2017-18.

Department for Culture, Media and Sport (DCMS)

DCMS hold at least 45,000 records that date from 2000 and earlier for which they do not have accurate data on dates. They are unlikely to meet the transitional timetable during 2014 unless they can identify all the relevant files by then.

Department for Education (DfE)

DfE is on track to meet the transition timetable, with no backlog.

Department for the Environment, Food and Rural Affairs (Defra)

Defra says it is ahead of the transition timetable. While this is true for its central records, Defra hold 14,000 files overdue for appraisal or destruction inherited from Arms Length Bodies.

Department for International Development (DfID)

DfID is on track to meet the transitional timetable, with minimal backlog.

Department for Transport (DfT)

DfT say they are on track to meet the transition timetable, though the most recent RTR shows a backlog of some 800 files overdue for appraisal or destruction.

Department for Work and Pensions (DWP)

DWP is ahead of the transition timetable, with no backlog.

Department of Energy and Climate Change (DECC)

DECC's record management service is run by BIS as a shared service. The returns to the RTR suggest some backlog.

Department of Health (DH)

DH says it is well advanced in meeting the transition timetable. Its returns to the RTR indicate some backlog, though reducing.

The Foreign and Commonwealth Office

See separate section below.

HM Revenue and Customs

HMRC says that it is meeting the requirements of the 30 to 20 year timetable without difficulty. However, the most recent RTR indicates a backlog with the comment that 'the figures are estimations only. HMRC say it may have considerably more records which it is unable to identify at present.

HM Treasury (HMT)

HMT expects to fall behind with the 1985 and 1986 releases (due in 2014) but thereafter expects to meet the transition timetable. The accelerated review has brought to light additional, pre-1984 records and so HMT now has a sizable backlog to clear.

Home Office (HO)

The Home Office is currently behind on transferring records due in 2014, but has brought in additional reviewers. It is using them to conduct an accelerated review and expects to have completed review of all records covered by the transition period by the end of 2015.

Ministry of Defence (MoD)

MoD says is on track to deliver against the transition timetable. But this excludes some 50,000 legacy files. The bulk of these are files in the MoD Main Archive with a last enclosure date before 1981 (23,000) and an estimate of the number of Defence Infrastructure Organisation records (12,000). MoD say that meeting the transition timetable will take priority over assessing and transferring the legacy files.

Ministry of Justice (MoJ)

MoJ says it is ahead of schedule in meeting the transition timetable. It has no backlog of files for appraisal or destruction, though some files are overdue for transfer.

Northern Ireland Office (NIO)

NIO has a small backlog but should meet the transitional timetable.

Foreign and Commonwealth Office Files

21. The FCO is the department with the greatest difficulties meeting its obligations under the Public Records Act and the Constitutional Reform and Governance Act. As well as dealing with the release of regular departmental records under the 30 year rule, it has had to handle two other sources of records: the “migrated archives” and the “special collections”.
22. The migrated archives are records from former colonial administrations which were sent to the UK at the time of independence and held by the FCO. The background to the confusion over the status of these files is set out in Anthony Carey’s report of 24 February 2011. The Foreign Secretary announced on 5 May 2011 that the process of examining the information in the files and making them available through the National Archives would be taken forward rapidly. On 30 June 2011 he announced that Professor Tony Badger had been appointed to provide independent oversight of the review and transfer of these records to TNA. This required additional resources in the FCO, which were provided. The transfer of the migrated archives was completed in November 2013, with a total of 20,000 files transferred.
23. The FCO also holds some 600,000 files outside its standard FCO departmental filing system, known as “special collections” (see <https://www.gov.uk/fco-special-collections>). These include additional colonial records, and records relating to the two World Wars (including compensation claims from those who suffered Nazi persecution), as well as large volumes of registers and indices and some 170,000 Foreign Compensation Commission files. Within the special collections there are some 270,000 files from the former British administration of Hong Kong, mostly on microfilm, and for some of which, because of their special sensitivity, the Lord Chancellor gave his approval in principle in 1997 for their retention for 50 years after transfer to the UK government.
24. As a result of dealing with the migrated archives, and preparing to deal with the high priority series within the special collections, the FCO is well behind in meeting the transitional timetable for the move from the 30 to the 20 year rule. According to the timetable, FCO should have already transferred all files up to 1984 to TNA. FCO’s current estimate is that they will not complete transferring 1984 files until 2016.
25. Thereafter, the FCO’s current plan does not have them meeting the 20 year rule until well after the end of the transitional plan in 2023. They say they can prepare for transfer up to 14,000 annual departmental files each year, or 140,000 over the transitional period. This represents only around 40% of the total number of files created between 1983 and 2002 which they would expect ultimately to transfer. They have proposed focusing on transferring higher priority files during the transitional period, based on past demand for records transferred to TNA, as evidenced by consultations with historians and records of files accessed at TNA. So, for example, files on the Middle East would be priority A, whereas files on Maritime and Transport would be priority C.

26. At the same time, the FCO plans to start the transfer of the special collection files, again according to an assessment of priorities following consultations with academics and others. Around 10% of the special collection records are considered high priority, including intelligence records (notably Information Research Department), colonial records and records relating to the two World Wars. These would be transferred by 2019, with the medium and low priority records by 2027 and the Hong Kong records (which the Lord Chancellor had agreed should be closed for 50 years) by 2047.
27. FCO has increased the resources applied to reviewing and preparing files for transfer. The number of sensitivity reviewers has been increased to 29 as part of the push to transfer the migrated archives, and a further 12 are in the process of being recruited. This is to enable the output of reviewed files to increase from 5,000 in 2009 to 12,000 in 2013 to over 20,000 in 2014 and succeeding years (14,000 annual departmental files and 6,000 files from special collections).
28. One question over resources is whether the sensitivity review of the special collections material might be carried out in a simplified, less intensive way. Some of the material is very old, and it may be possible to accept greater risks in releasing the material. I recommend that the FCO consider with Professor Badger what scope there is for reducing the resources required for sensitivity review of the special collections (and hence enabling increased resources for dealing with annual departmental records).
29. Subject to that, I accept that, with the level of resources the FCO has allocated to records review and management, their plans for prioritising releases, of both annual departmental files and special collections, are sensible and well thought out. They have been agreed by the Lord Chancellor's Advisory Council.
30. I cannot, however, regard it as satisfactory that the FCO will continue to slip far behind the transitional timetable for moving to the 20 year rule. It also increases the scope for other departments to make inadvertent releases as departments moving together can provide improved sensitivity checking on each other's proposed releases. I recognise the pressures on resources within the FCO and the other competing priorities. But I recommend Ministers and senior management consider allocating further resources so as to enable FCO to come closer to meeting their obligations under the PRA and CRGA.

Themed releases

31. The delays in release of FCO files, in particular, makes it harder for historians to get the full picture of a particular policy or event, when different departments release their material at different times. One contribution towards mitigating this is themed releases, where departments collaborate to ensure that all the records on a particular issue are released simultaneously. This has been done for a few issues, including for papers on the Falklands campaign (at least partially). I recommend that departments consider the scope for further themed releases, including for example the First Gulf War in 1990-91.

Conclusions on Transition

32. It is of concern that so many departments have caches of legacy files that are not part of the departmental file plans and where the contents are often unclear. Several departments told me that they feared finding more such legacy files as they probed within the department. I recommend that TNA with support from MoJ lead an exercise to press departments to do a complete audit of all areas where such legacy files may exist, and to report that as part of the Record Transfer Report as well as to the Lord Chancellor's Advisory Council.
33. On the transfer of regular annual departmental files, most departments seem to be in line to meet the transition timetable, with the exception of the FCO discussed above. But several are not fully on track and for others their legacy files remain an issue. In general, departments seem to have allocated adequate resources, at least for the regular annual transfers.
34. I have discussed above the general issue of accountability and enforcement of policies around records management. My recommendation that the Keeper be invited annually to make a presentation to permanent secretaries would cover progress on the transition to a 20 year rule. But I also recommend that where Record Transfer Reports reveal significant backlogs in a department's transfer programme, that should be reported to the department's board.

Appraisal, Selection and Disposal

35. Annex 2 sets out the processes for appraising records and selecting those of historical interest for transfer to TNA. As noted above, the processes are the responsibility of departments, but TNA work closely with them to provide advice and guidance. Departments produce internal guidance for staff to help with decisions on selection and disposal.
36. By their very nature, many records are ephemeral and of no value to a department's business or to historians. Some are disposed of soon after creation. Others are retained until further review and appraisal is taken later in the life of a record. Departments are advised to draw up retention and disposal schedules to take account of business, legal or administrative reasons why records should be retained or disposed of, and to keep schedules detailing which records have been destroyed and when. The Lord Chancellor's Code of Practice says:

“Details of destruction of records should be kept, either as part of the audit trail metadata or separately. Ideally, some evidence of destruction should be kept indefinitely because the previous existence of records may be relevant information. ... At the very least it should be possible to provide evidence that as part of routine records management processes destruction of a specified type of record of a specified age range took place in accordance with a specified provision of the disposal schedule. “

37. The Data Protection Act 1998 reinforces the imperative to dispose of information in a timely, orderly manner and not to retain personal information without good reason. In general this implies a presumption that once the legitimate business use for the information has expired personal data should be disposed unless other approved reasons allow its retention – which can include historical value.
38. When records reach the age to be considered for transfer to The National Archives, departments will discuss and agree with TNA which records are of historical value and should be transferred and which are not and can be destroyed if there is no business case for the department retaining them. Only a small proportion of records are selected for transfer to TNA (generally between 2% and 5%) though this varies widely between departments, with FCO, MoD and Cabinet Office in particular frequently selecting and transferring a much greater proportion.
39. Departments have different processes in place for reviewing and confirming decisions on disposal of records. The Cabinet Secretary's report on the Amritsar case revealed that one MoD file on the provision of military advice to the Indian authorities had been destroyed in 2009 as part of a routine process undertaken by MoD at the 25 year review point, where decisions to destroy files are made by the relevant officials on a case by case basis, assessing relevance to ongoing operations and the broader historic significance. I asked MoD for some more information about the processes followed in this case. They told me that MoD had two manuals which covered policy on destruction of highly classified records, one of which advised that such documents should be passed to the records management team for review, and the other, no longer current, that such documents could be destroyed provided there were two independent signatories confirming this. In this case, the latter procedure was mistakenly followed – though MoD stressed that even if the correct procedure had been followed, the file might nonetheless not have been selected for permanent preservation and might have been destroyed at a later date. MoD are strengthening the guidance to staff to ensure the two policies are linked to avoid a repetition of this mistake.
40. There has been recent publicity about information received by the Home Office on child abuse allegations. The investigator appointed by the Permanent Secretary found that 114 potentially relevant files were not available. Those were presumed by the Home Office and the investigator to be destroyed, missing or not found, although the investigator made clear that he found no evidence to suggest that the files had been removed or destroyed inappropriately. That is an issue for the further review to be led by Peter Wanless. I only note here that the difficulty accounting for these files highlights the need for keeping good records of files that have been destroyed or otherwise disposed of.
41. I do not believe there is a “magic bullet” that could mean that the position never arose where files which had been destroyed were subsequently found to be of historical interest. It is impossible to preserve all documents and records, and a process of selecting and destroying some has to be followed (see below for digital records). I am satisfied that, in general, the discussions between

departments and The National Archives, and departments' own internal arrangements, provide a reasonable process for decisions on destruction. Ultimately, this has to be a responsibility of individual departments. I note that the existence of large collections of legacy files in several departments illustrates that the default has been to keep rather than destroy files until they have been fully examined.

42. I do, however, recommend that departments should publish retention or "what to keep" schedules, setting out their policies on what types of records to keep, and for how long. This would help provide greater transparency of departments' decisions on retention and disposal.

Sensitivity Reviewing

43. Before files are transferred to The National Archives, they are reviewed by departments to check whether they contain sensitive information covered by one or more of the Freedom of Information Act exemptions that apply to historical records and so should either be retained in departments or transferred to The National Archives but closed to public access.
44. The extent of sensitivity reviewing varies between departments. Many departments have records containing personal data: to the extent these records are of historical value, they are normally exempt from disclosure until the individual's death. The majority of departments have very few records containing other types of sensitive material and hence limited need for sensitivity reviewing. But some, notably the FCO, MoD, Home Office and Cabinet Office have a large volume of records containing other potentially sensitive material.
45. For personal data, the normal practice where it is not known whether the individual concerned is alive or dead is to assume a lifespan of 100 years and, for an adult, to assume he or she was aged 16 at the date the record was created. This may seem overly cautious, but it reflects practices agreed with the Information Commissioner. The resources required to probe further whether an individual had died would be disproportionate. But it is notable that 70% of closures in records transferred to The National Archives reflect the inclusion of personal data.
46. The first step in the process of sensitivity review is to identify the records that potentially contain sensitive material. This can involve an assessment of the risk that file series will contain sensitive material. In some cases, the risk will be low, and the department may judge that detailed page by page review is not necessary, with perhaps some sampling to confirm that judgement. In other cases, more detailed review will be thought necessary.
47. The process for sensitivity reviewing of paper files identified as containing potentially sensitive material (for digital records see paragraph 76 below) involves reviewers going through the files page by page identifying material that may be sensitive. Reviewers are often former members of the department concerned,

with a knowledge of the issues that may be sensitive, normally working part-time. The number of reviewers in each department reflects the volumes of material that needs to be reviewed, varying from some 40 in the FCO to single individuals in other departments.

48. Detailed guidance is provided to sensitivity reviewers about issues that need attention, whether concerning their own department's interests or those of another department or agency. Where the issue concerns another department, reviewers consult the other department and may send the file to the other department for them to review.
49. Departments have differing processes for signing off on decisions to release or to retain or close files. In most cases, this reflects the differing nature and extent of the sensitivity of the records. Where the principal sensitivity concerns personal data, the need for a second opinion may be less than where other potential FoI exemptions are engaged. In most departments there are arrangements that decisions on release or closure are signed-off by a second reviewer, sometimes with a sample of decisions checked in more detail.
50. The current guidance from TNA, backed by the Lord Chancellor's Advisory Council, is to seek to redact individual references within a file where that is possible, or failing that to redact individual pages. It is only where that is impracticable that whole files should be closed.
51. Sensitivity reviewing is inevitably a labour-intensive process, requiring judgement, and one where occasional mistakes are bound to occur. Indeed, the release that led to the setting up of this review was a mistake, where the reviewer did not spot references to the SAS, which would have triggered a reference to MoD. In many ways, given the volumes of material subject to sensitivity review and the volumes released, it is remarkable that more mistakes are not made.
52. However, the mistaken release of the Amritsar documents does raise the question whether it would have been right to withhold the information had it been spotted – as the corresponding papers in other departments' files were withheld. I fully understand the sensitivities over special forces' operations, and in particular the need to protect the identity of SAS officers and any details about their operations and methods; indeed information relating to the special forces is covered by a specific exemption under Section 23 of the Freedom of Information Act. And the sensitivity of Anglo-Indian relations is also relevant. But it is on the other hand arguable that the fact of the SAS being asked 30 years ago to provide advice to the Indian government, and doing so, was not something that necessarily should have been withheld, as indeed the public interest in the issue illustrates. And had the full picture, as set out in the Cabinet Secretary's report, been made public at the same time, the limited nature of the SAS's role and advice would have been clear from the outset, mitigating the more sensational initial reporting.

Is there enough high-level involvement in decisions on closing files or on releasing information?

53. This brings me to the general issue about the case for higher-level review of decisions on withholding or releasing information. This can provide a check on whether departments and their sensitivity reviewers are over-cautious and tending to withhold or close more information than is really necessary. Or, conversely, whether enough weight has been given to the public interest arguments for withholding particular items of information
54. The Lord Chancellor's Advisory Council (LCAC) is responsible for providing advice to the Lord Chancellor on applications by departments to retain files or to pass files closed to TNA. All applications are considered by the Council at its quarterly meetings. The Council makes recommendations on applications to retain files to the Lord Chancellor, who needs to give his approval. The Lord Chancellor has delegated decisions on the closure of records to the Council. Members of the Council also play a valuable role in forming panels to consider Freedom of Information requests for access to closed records held by TNA, highlighted in the recent Triennial Review of the LCAC.
55. The sheer volume of applications for retention or closure means that the LCAC can in practice only probe a very small proportion. Its annual report says that in the course of four meetings in 2013-14 it considered over 3,600 applications for extended closure and almost 460 applications for retention. The Master of the Rolls kindly invited me to attend an LCAC meeting and I can attest to the efforts that members make to challenge applications. It is at its most effective in hearing applications in person from departments for retention or extended closure which raise significant issues. But it is inevitable that only a very small proportion of the more routine applications listed in schedules presented at the meetings can be picked out and referred back for further information to be provided by departments. Of the requests for closure in 2013-14, it queried 69 (2 per cent).
56. To some extent, the small proportion of queries reflects an improvement in the information which departments provide to the Council in support of their applications. In its annual report, the Council says that it has continued to encourage departments to be as consistent and thorough as possible in the information they provide regarding their applications, and that it has been pleased to see a marked improvement in the quality of the applications it has received.
57. Nonetheless, there is a danger that departments will be naturally risk-averse in deciding what information should be closed. While the Advisory Council can probe requests that look obviously thin, and provide a valuable check to departments, it is not in a position to challenge the bulk of the requests. Individual sensitivity reviewers have assured me that they press for material to be released wherever possible. But decisions in departments are often taken at a low level, where the risk/reward calculation may point towards caution. And while Freedom of Information Act requests may in principle enable researchers or others to challenge decisions on closure, that is often a laborious process.

58. The Cabinet Office has recently set up a Challenge Panel made up of senior officials and chaired by the permanent secretary. Its remit is to consider proposals for closures or retentions before they are put to LCAC, and in particular to provide challenge to such recommendations. It also reviews proposals for the release of files and can probe whether the public interest arguments for closure have been properly taken into account. The secretariat for the Panel review all the files due for transfer to TNA and bring out the issues raised so that the Panel can consider them.
59. A senior group like this should be well placed to probe the balance between the arguments for closure or retention and the case for greater openness. It also enables the communications team in the Department to brief themselves on the issues likely to be raised when the releases are made public.
60. I recommend that the Cabinet Office review how this new Panel works in practice, in particular once the review and transfer of 1985 and 1986 files has been completed. If it is seen to provide effective challenge, other departments should be recommended to set up similar arrangements for senior oversight, though these should be proportionate to the volume of files transferred to TNA and the degree of sensitivity.

Efficiency

61. I have looked briefly at two areas where efficiencies might be found: outsourcing some of the work of records management; and pooling sensitivity reviewing
62. On outsourcing, the Crown Commercial Service (CCS) has established a Records Management and Associated Services (Document Storage) Framework Agreement. Many departments make use of this, particularly for off-site storage, but also in some cases for work on preservation and preparation of files for transfer to The National Archives; others have let contracts outside the framework. Departments who have outsourced work generally seemed satisfied with the services provided and thought they represented value for money, though one had had problems with the standard of file preparation. CCS is currently looking into how outsourcing can be done more effectively and efficiently, with a view to updating the framework and letting a new one in 2016. I recommend that all departments who have not yet considered outsourcing work should do so, though I recognise the limits on what is possible for highly classified files or files with particularly high historical value.
63. I raised with the key departments the possibility of pooling sensitivity reviewers. At present, reviewers frequently have to refer files or documents to other departments where potential sensitivities relate to another department's or agency's business. I asked whether having pooled reviewers capable of dealing with cross-departmental issues, probably co-located, would improve the efficiency of the process. No one I spoke to believed this was practicable or would significantly improve efficiency. They pointed to the need for reviewers to have specialist knowledge of a department's business, with reviewers often being

former members of the department concerned. I am persuaded by these points and make no recommendation in this area.

Digital Records

64. My letter of appointment asked me to make a brief assessment of the preparations for review and release of digital records under the Public Records Act. In the time available, my assessment has necessarily been brief. But it has revealed real concerns.
65. In the past, one of the key issues has been seen as hardware and software obsolescence or “digital continuity”: the fear that data would be lost because it could not be retrieved from out-of-date hardware or was encoded using software that could no longer be run. Those concerns seem to have largely been overcome, through migrating data onto newer hardware and software platforms – though some concerns do remain about deterioration of removable storage media. TNA is able to accept digital data transferred in a very wide range of formats.
66. A more pressing issue is the systems in place for capturing and storing data, and organising it in a way that will enable records to be searched and retrieved. Almost all departments have struggled with Electronic Document and Records Management (EDRM) systems, switching between systems as experience with earlier ones proved unsatisfactory.
67. The experience of various inquiries which have relied on information since the widespread introduction of digital records has revealed deficiencies in record-keeping and in organisation of records. Material has generally been submitted on paper even where it was clearly digital in origin (print-outs of emails for example), and has often been poorly indexed. The experience has been that departments with strong paper record keeping have generally provided the material with the fewest gaps and were more easily able to plug any gaps identified by the inquiries. Similar difficulties have arisen over identifying digital material that should be released to former Prime Ministers as part of their personal archive when they leave office (as set out in paragraph 11.29 of the Cabinet Manual).
68. There are significant issues over how digital records are organised and indexed. Digital records need “metadata” to help identify their content and other relevant information to help with search and retrieval. Many departmental systems have been poor at capturing appropriate metadata when the documents were created. While it is possible to derive some metadata directly from the content of documents, this is much less satisfactory. The existing e-Government Metadata Standard dates from 2006 and has only 4 mandatory fields, with all the rest being voluntary; my concerns about enforcement apply here too. The Cabinet Office’s Standards Panel issued a draft metadata profile last year, but this has yet to be finalised.
69. One department highlighted the issues in its response to my letter:

“The appraisal of electronic records is challenging owing to sheer volumes and ergonomic and human factors which must be taken into account when viewing documents/records on screen. Unlike paper, electronic records are rarely well organised to form a narrative to facilitate appraisal. Records are fragmented and scattered; metadata (title, subject, review metadata) is frequently of poor quality. Software does exist to analyse records and group them on basis of shared attributes but it can only ever support reviewers in their appraisal decisions.”

70. There is also confusion over what departments should keep, and who should be responsible for decisions. Many departments have placed the onus on individuals to transfer records (including both emails and documents) into departmental filing systems, sometimes with the warning that emails in inboxes over 6 months old would automatically be deleted. In practice, the early processes for transferring records into filing systems were often not user-friendly, and individuals rarely if ever saw it as a priority. Systems have improved in recent years, and there has been a push within departments to emphasise to staff the importance of records management. But there are concerns that earlier digital records will be incomplete and poorly organised and indexed.
71. It will also be harder to establish audit trails of who authorised the destruction of digital records – or, indeed, simply failed to transfer them to the permanent archive. It should be possible to do this as the 20-year point nears and TNA are discussing with a department what records should be transferred and what need not be kept. But it will be much harder where digital records are deleted at an earlier point in the cycle.
72. There are some who argue that the cost of digital storage is falling continuously, so the default should be to keep everything. Against that, the sheer volumes of ephemeral data would make it much harder for researchers to find the key data of information to them. And there needs to be some weeding to eliminate multiple copies of the same document. But I think it is inevitable that the volumes of information eventually transferred to the National Archives will increase as records are increasingly digital.
73. The Government’s response to the Dacre Review said in February 2010:
- “We support the recommendation that the Government should review its strategy for digital records, to provide us with an assurance that we are appropriately managing these risks and successfully delivering the benefits. However, this review must be timed to allow for the completion of the Digital Continuity Project and for government departments to embed the resulting approach. An independent review of the strategy for managing digital records will therefore take place from 2012. The review will assess how effectively government has implemented appropriate digital record capture and preservation processes and technologies and whether it is on track to realise the benefits from managing digital information in a sustainable way.”

74. So far as I can discover, this independent review has never been carried out. As I noted above, the concerns about digital continuity have diminished, but the issue of “how effectively government has implemented appropriate digital record capture and preservation processes” remains.
75. I have not in the time available been able to go into these issues in detail. But what I have learnt illustrates some real concerns in this area. I recommend that the government should now set up the review envisaged in the response to the Dacre report.

Sensitivity Review of Digital Documents

76. A separate issue is the future process for sensitivity review of digital records. The present process for paper records involves departments identifying files that are likely to contain sensitive material, and reviewers reading through the files page by page, identifying issues and consulting other departments where necessary. With digital records that is unlikely to be practicable. As noted above, the structure and organisation of digital records is likely to be much less well structured, and the volume of material will mean it is impossible to read through every document. Evidence suggests that the physical effort of scanning documents on a screen would reduce the productivity of sensitivity reviewers significantly.
77. The risk is not just that material may be released that should not have been, but also that, to avoid this, departments may decide to close much more records just to be safe, running counter to the wider desire for openness. These risks will be exacerbated by the likely increase in the volume of digital records that will be retained compared with paper files.
78. It looks as if departments will have to use some sort of search technology to narrow down the records that need to be scanned individually for sensitivity. A crude use of search strings will almost certainly be impracticable for any department with a large volume of digital material and significant concerns about sensitivity. I have seen a recent example in a different context where an agency used a massive search string which turned up thousands of irrelevant records that had to be weeded out by individual inspection. That approach would not be scalable for the volumes of material which departments will be dealing with.
79. Recognising this issue - which potentially affects private archives as well as government ones - Northumbria University and the University of Glasgow are proposing a research project to develop a framework for digital sensitivity review, comprising a review method and a decision support tool. The Principal Investigator is a former member of the Lord Chancellor’s Advisory Council, and The National Archives has seconded a senior member of staff to lead the work. A number of government departments are supporting the project.
80. The project is seeking Research Council funding, but has not yet secured this. I hope it will, though there are concerns over how long this will take. There may also be scope for some funding through philanthropic foundations. This is an issue of particular importance to government, and one where deadlines are

approaching: the first FCO transfer of digital records to TNA is due to take place in 2017. I therefore recommend that the government should consider supporting the project more directly, both to encourage the other sources of funding by demonstrating government backing and to bridge any shortfall if they are insufficient to enable the project to start promptly or to complete its work.

81. Separate from that research project, experts I spoke to during the course of my review suggested that there might be private sector solutions using technology developed for intent analysis - analysing social media and similar sources on behalf of advertisers and other companies. I recommend that the government continue to explore whether there is scope for co-operative projects here, which could be of wider application. Another possible route to consider is whether the tools used for dealing with discovery orders in legal cases might be used. Existing tools largely rely on search strings, but new ones being developed include features such as context analysis and may be relevant to digital sensitivity reviewing.
82. On a related point, the advent of digital records may enable new ways of checking whether records contain potentially exempt personal data. DWP and HMRC have considerable experience of matching their records against records of births and deaths. Using similar methods for analysing government records would avoid the blanket closure of many records for 100 years where it is not known when the individual concerned was born and whether or not he or she is dead. At present, it is not cost-effective for departments to make these sorts of checks. But as automated checks are developed this may become possible.

Alex Allan
August 2014

Annex 1 - Terms of Reference

Under the Constitutional Reform and Governance Act 2010, the 30 year rule was superseded by the 20 year rule. The National Archives transitional plan states that each department should transfer 2 years' worth of records annually from 2013 to 2022 with the intention that by 2022 all annual releases will be after 20 years.

The Prime Minister has commissioned an urgent review to establish the position across Government on the annual release of papers and the ability and readiness of departments to meet the requirements of moving from a 30 to 20 year rule, including the processes for withholding information where appropriate. The reviewer will report to the Cabinet Secretary.

The terms of reference are to report on:

- Department's current plans to meet the 20 year rule
- The retention and disposal of public records
- The checks and balances between transparency and the need to protect sensitive national records
- The resources and expertise required
- Coordination between departments and TNA
- Considerations for when transfers to TNA will move from paper to electronic records

To provide a final report to the Cabinet Secretary at the conclusion of the review on its output and any lessons to be learned for the future.

Annex 2 - Selection and Preservation of Public Records

The Public Records Act 1958 (PRA) places responsibility for the management of public records on government departments. Specifically, departments are obliged by sections 3, 4 and 5 of the PRA to select, transfer, preserve and make available those records that have been defined as public records. These obligations apply to records in all formats and media, including paper and digital records.

Each department appoints a departmental record officer who is responsible for the care of all its records (including electronic records). The departmental record officer's work on public records is carried out under the guidance and supervision of The National Archives through its information management and practice department.

The National Archives maintains on its website a range of detailed guidance and tools covering each step of the process of [selecting and transferring records](#), the first five of which are the responsibility of the departments concerned:

1) Appraisal

This process of appraising records is primarily focused on identifying key departmental records which are needed for ongoing administrative, legal or fiscal purposes. Understanding the value of such collections will:

- assist efficient and effective administration
- enable decision making and policy development based on current information
- allow organisations to be accountable in terms of the management of resources, as well as legal and financial scrutiny

Appraisal should also help public records bodies understand which records are likely to have wider historical value, and should therefore be kept indefinitely. The National Archives' records collection policy describes which records are likely to hold this kind of value, and therefore need to be managed in a way that ensures long term survival.

2) Selection

The process of selecting records is primarily focused on determining which records hold a historical value to an organisation or to wider society. These records are likely to document the history, structure and functions of an organisation, or provide research material on persons, places and subjects. It is the responsibility of departments to identify those records of historical value, and to make selection decisions under the supervision of The National Archives.

The National Archives' records collection policy outlines the key types of records which should be selected for permanent preservation. In order to help apply these themes to departmental holdings, and to justify selection decisions, The National Archives' has produced generic selection criteria.

The selection process should be done in a way that most efficiently and effectively allows for records of historical value to be identified. There are different methodologies for doing this work, depending on the nature and arrangement of departmental record holdings.

3) Sensitivity review

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

- should be retained, as the records are too sensitive for transfer to The National Archives
- should be transferred to The National Archives as closed, as Freedom of Information (FOI) exemptions apply
- can be transferred to The National Archives as open, as no FOI exemptions apply.

This ensures that material is held correctly according to its security classification, and that records are made available to the public as soon as possible in accordance with the Freedom of Information Act 2000.

4) Cataloguing and preparation

This is the process of preparing records for permanent preservation. For paper records it includes creating descriptions and physically preparing the files for transfer. For digital records it includes generating metadata and preparing digital files for transfer. Preparation for transfer is an important step which must be completed in accordance with The National Archives' guidelines - it is a necessary part of ensuring the long-term survival and preservation of the records.

The process applies equally to bodies that transfer to a place of deposit. Places of deposit will have their own cataloguing and metadata standards and conventions.

5) Delivery

The process of transporting the records from the department to The National Archives is also known as 'uplift'. It involves arranging with The National Archives the delivery of the records and planning their movement.

If records are transferred to a place of deposit the same arrangements should apply. The public record creating body is responsible for transporting records to the place of deposit and should consult with staff at the place of deposit on planning delivery.

6) Accessioning

Accessioning is the work that The National Archives does once records have been delivered, so that it can make the records available.

This is the end of the transfer process. For paper records it involves:

- confirming that all records delivered were the expected ones
- confirming the cataloguing standards and preparation standards
- making the descriptions available in The National Archives' catalogue
- moving the files to a permanent place in The National Archives' repositories
- making the record available to be viewed by the public if it is transferred open (an open record is a record that is available for public access on an unconditional basis)

And for digital records:

- checking that the files, metadata and closure form sent by departments pass The National Archives' technical checks
- The National Archives then sends the department an email confirming that it has safe custody of the records – at this stage, any copies of the records held within departmental systems should be securely deleted
- the digital records will then be ingested into The National Archives' digital records infrastructure system for preservation and if open, presented to the public via the Discovery service on The National Archives' website

Disposal of records

The Lord Chancellor's Code of Practice on the management of records states:

'Authorities should define how long they need to keep particular records, should dispose of them when they are no longer needed and should be able to explain why records are no longer held'

For government departments, 'disposal' can mean transferring the record to The National Archives for permanent preservation, presenting the record to another body (under section 3(6) of the Public Records Act 1958) or destruction.

Departments are required to create and maintain an overall disposal policy, which sets out in broad terms the types of records likely to be selected for permanent preservation, and 'disposal schedules' (sometimes called 'retention schedules') which identify and describe records to which a pre-defined disposal action can be applied e.g. 'destroy x years after [trigger event]'

Where records are to be destroyed, the code requires that they should be destroyed in as secure a manner as required by the levels of confidentiality or security markings they bear. This requirement applies to all destructions regardless of whether they are carried out in-house or by contractors. For digital records,

destruction may be more than a matter of overwriting the data. No record can be considered to have been completely destroyed until all copies, including back-up copies, have been destroyed, if there is a possibility that the data could be recovered.

The code requires that the destruction of records should be documented:

‘12.13 Details of destruction of records should be kept, either as part of the audit trail metadata or separately. Ideally, some evidence of destruction should be kept indefinitely because the previous existence of records may be relevant information. However, the level of detail and for how long it should be kept will depend on an assessment of the costs and the risks to the authority if detailed information cannot be produced on request.

12.14 At the very least it should be possible to provide evidence that as part of routine records management processes destruction of a specified type of record of a specified age range took place in accordance with a specified provision of the disposal schedule. Evidence of this nature will enable an authority and its staff to explain why records specified in a court order cannot be provided or to defend themselves against a charge under section 77 of the Act that records were destroyed in order to prevent their disclosure in response to a request for information.’

Access to public records

Until January 2005, access to public records was governed by the Public Records Act 1958, and the Public Records Act 1967. The Freedom of Information (FOI) Act came fully into force in January 2005 and replaced those parts of the Public Records Act which related to access to records. Since the FOI Act came fully into force, members of the public can ask to see information held by public authorities as soon as it has been created. The Act gives people two new rights of access:

- the right to be told whether the information is held by the public authority
- the right to be provided with the information

These new access rights may only be overridden by exemptions in the Act.

The FOI access regime replaced that of the PRA, which was commonly referred to as the ‘30-year rule’. Under the PRA, records were opened on 1 January, 30 years after the date of the last paper or entry in a record, plus one extra year, to ensure that all papers on the file were at least 30 years old. Thus records bearing a last date of 1973 were released into the public domain on 1 January 2004.

Some records used to be closed for periods longer than 30 years. There were various reasons for this extended closure. Some records contain sensitive personal information about people and events. Others include information whose release could damage national security or international relations, or the information may have been supplied subject to certain confidential undertakings. The release of other types of information may be barred under legislation. Records that were closed for

extended periods for reasons like this before the FOI Act came into force in January 2005, remain closed only where an exemption in the FOI Act applies.

FOI has not directly altered the way in which records are selected for permanent preservation or disposal. Most records selected for permanent preservation are still transferred to The National Archives (or other Places of Deposit). Most of the records transferred after January 2005 are open; those which are closed have only been closed where an exemption in the FOI Act continues to apply.

Under FOI, the public have a right of access to information in public records before they are transferred. In these cases, members of the public ask the public authority which currently holds the information for access to it.

In January 2011 the Government confirmed that it would implement a 20-year rule for the release of historical records into the public domain, as provided for in the Constitutional Reform and Governance Act 2010 (CRAG). The ten-year transition to the new 20-year rule began on 1 January 2013. The rule will be fully in effect from 2023. The timetable for transferring records during this transitional period is set out in the table below:

Year	Transferring under 20-year rule transition
2012	1982
2013	TRANSITION BEGINS 1983 and 1984
2014	1985 and 1986
2015	1987 and 1988
2016	1989 and 1990
2017	1991 and 1992
2018	1993 and 1994
2019	1995 and 1996
2020	1997 and 1998
2021	1999 and 2000
2022	2001 and 2002
2023	TRANSITION ENDS 2003

The transition is linked to reductions for certain FOI Act exemptions provided for in the Constitutional Reform and Governance Act 2010, which will decrease in step with the 20 year rule change.

It should be noted that both Scotland and Northern Ireland have their own public records legislation and maintain their own public record archives, so are not affected by this change to the 30-year deadline for records transfer. In Scotland, the decision was taken to reduce the closure on historical records from 30 to 15 years under The Freedom of Information (Scotland) Act 2002 (FOISA). The Public Records Act (Northern Ireland) 1923 already makes provision for the transfer of records after twenty years

Retentions, the role of the Advisory Council and the ‘security blanket’

Some records are ‘retained’ by government departments. Retention means that a department requests the right to keep back a record that would usually be due for transfer. The approval to retain is given by the Lord Chancellor, and normally lasts for a maximum of five years, after which time a new request must be made. It is usually granted on the basis of a continuing administrative need by the department (for example maps and plans of mine workings which are still with the Coal Authority).

The Lord Chancellor has to approve all applications to retain records. Departmental record officers make such requests, which are assessed in the first instance by The National Archives and then considered by the [Advisory Council on National Records and Archives](#), which is chaired by the Master of the Rolls.

Under the FOI Act, the Advisory Council is responsible for advising the Lord Chancellor on the application of the Act to historical public records. In particular this involves acting for the Lord Chancellor in advising government departments on the relative strengths of the public interest in the release of particular records and the public interest in their non-disclosure. In addition, the Council reviews applications from departments for the retention of public records under the Public Records Act. The Lord Chancellor never signs a retention instrument until he has received advice on it from the Council.

The justification for the use of FOI exemptions and for retentions is scrutinised closely, and departments are often asked for further information. This reconsideration can lead to a document (or a redacted version) being made available after all. If the Council cannot reach a decision by any other means, it may ask the Master of the Rolls to nominate a member to inspect documents and make recommendations.

The table below 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 five years is granted when grounds 1 - 5 or 7 are satisfied and up to ten 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 after they are defined as historical records 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 that are defined as historical records, but which it is more effective to treat as a unit for appraisal 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 appraisal 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

Given the short periods allowed for the consideration of applications for access under the Freedom of Information Act, members are asked on occasion to act between meetings. Panels of three members are sent the necessary papers and asked to consult as necessary and report their conclusions to the Secretary of the Advisory Council on behalf of the whole Council. Reports on the conclusions of such panels are presented to the next meeting, when similar public interest issues are also debated.

A full list of FOI exemptions applicable after 30 years is set out in the table below:

FOIA section	FOI Exemption details (Q = qualified by a public interest test)
21	Information is already accessible through another Act or through the department's publication scheme.
22	Information intended for future publication (Q)
23	Information supplied by, or relating to, named bodies dealing with security matters
24	Prejudice to national security (Q)
26	Prejudice to defence (Q)
27(1)	Prejudice to international relations (Q)
27(2)	International relations – information that was provided in confidence by others States or international organisations or courts (Q)

FOIA section	FOI Exemption details (Q = qualified by a public interest test)
29	Prejudice to the economy (Q)
30(2)	Information regarding civil or criminal investigations and proceedings which use confidential sources (Q)
31	Prejudice to law enforcement (Q)
34	Parliamentary privilege
37(1)(a),(aa), (ab)	Communications with Royal Family and Household (specifically the Sovereign and those who are or become heir and 2 nd heir)
37(1)(ac)	Communications with other members of the Royal Family not acting on behalf of those covered by (a)-(ab) (Q)
37 (1)(ad)	Communications with the Royal Household not acting on behalf of those covered by (a)-(ab) (Q)
37(1)(b)	Honours (Q)
38	Prejudice to health and safety of any individual (Q)
39	Environmental information (Q)
40(1)	Personal information where the applicant is data subject
40(2)	Personal information where the applicant is a 3rd party
41	Information provided in confidence
44	Prohibitions on disclosure: (a) Acts (b) Community obligations (c) Contempt of court

Records relating to the Security and Intelligence Agencies may be retained in departments under the authority of [the Lord Chancellor's Security and Intelligence Instrument](#) (often referred to informally as the 'security blanket'. The latest version of this instrument came into force in 2012 and it authorises the retention beyond 30 years of public records where this is necessary for national security reasons. The schedule to the instrument describes the categories of records to which it may be applied. Retentions under this instrument are not subject to consideration by the Advisory Council on National Records and Archives, though the Council was consulted as part of the arrangements for the new instrument.

Annex 3 – Departments’ Progress Against 30 to 20 Year Transition Timetable

1. Cabinet Office

The Cabinet Office is largely on track against the 20-year transition timetable, having transferred the bulk of its 1983 and 1984 records in 2013. It reports a backlog of just under 1,500 records that are overdue for transfer (and are not covered by a Lord Chancellor’s Instrument.) They aim to clear the backlog by the end of 2014. This is consistent with Cabinet Office’s most recent submission to The National Archives’ record transfer report.

Sensitivity of the records is high, with a large proportion transferred with closures under one of the FOIA exemptions or retained under the security blanket. For files covering 1981-1984, FOIA exemptions were applied to 360 transferred files or extracts from files. For the same period, the Cabinet Office holds 662 retentions of files or extracts.

Review and selection is carried out in-house by part-time reviewers (generally retired staff). The Cabinet Office is setting up a new, senior-level ‘challenge panel’ to review and challenge retention decisions, and this panel will be supported by Band A (Grade 7) staff who will go through each file and provide the panel with a synopsis covering what is being released and Cabinet Office’s plans to retain. The panel has already started work, considering the release of 1985 records later in 2014.

The first digital records are due for transfer in 2018-19. Review and selection will be more of an issue than capture (Number 10 has good capture already). The Cabinet Office has yet to begin making plans for digital review and transfer, and does not yet have a developed view on the resource implications, though it anticipates an increased requirement for sensitivity reviewers’ time, given the likely increase in volumes.

The National Archives carried out an Information Management Assessment in June/July 2013. A report on this assessment was published recently.

2. Crown Prosecution Service (CPS)

The CPS believes it will meet the 20-year transition by 2023, but acknowledges that it is not currently meeting the transition timetable. It reports that it has a backlog of records dating from 1978 to 1984. It is spending approx. £163k on clearing this backlog, having outsourced sensitivity review and preparation for these records, and in its comments in the most recent RTR states that it expects this work to be completed by the end of March 2015.

The CPS states that it transfers around 80 prosecution case files to The National Archives each year. Most of the files relate to murder cases and cases of unsolved murders that contain sensitive personal information and are closed for up to 100 years. Any challenges to the department’s decisions on the release or continued withholding of records are managed internally.

3. Department for Business Innovation and Skills (BIS)

The most recent RTR indicates that BIS has a backlog of 600 files overdue for appraisal or destruction and more than 3,000 files selected for permanent preservation that are overdue for transfer. In its RTR submission BIS notes that the review team at BIS currently stands at 3 reviewers, of which 2 are still in training. The review team comprised two part-time staff from April 2013 until a further reviewer was added from May 2014. BIS appears to be gradually reducing the size of the backlog, but is not yet meeting the transition timetable.

BIS noted that key areas of sensitivity relate to security matters, foreign trade relations and personal data. These records require more detailed checks but most records require only simple checks. The only element of BIS' processes to be outsourced is storage. Everything else is managed by the BIS team. BIS provides a knowledge and information management shared service for DECC.

The National Archives conducted an Information Management Assessment at BIS in May 2013. The assessment found BIS' oversight of its records and selection to be 'good practice' and its implementation of disposal decisions to be 'satisfactory'. In particular, the assessment commended BIS' Electronic Records Appraisal project as an area of good practice. The assessment recommended BIS 'develop a clear plan for the management and review of paper files to ensure the best use of review team resources and limited available space' and advised that 'to meet legislative compliance and best practice, BIS should investigate and develop the process for transferring digital information of historic value to The National Archives. This should include a methodology for adapting current sensitivity review methodology to digital records.'

4. Department for Communities and Local Government (DCLG)

DCLG believes that it will meet the 2023 deadline for transition and that from 2017-18 it will be transferring records in line with the transition timetable. The most recent RTR shows a backlog of just over 300 files overdue for appraisal or destruction.

It employs 1 FTE sensitivity reviewer (shared with DfT) and is currently using a macro-appraisal approach. It will be moving to micro appraisal by 2016-17 which will require more resource and will slow things down, principally on the DfT side (DCLG provides record management services for DfT and undertakes file preparation work for smaller departments such as CPS and Treasury Solicitor's department). DCLG's records are minimally sensitive and so the cost of sensitivity review is, for them, negligible. Sensitivity review decisions are quality assured by the relevant business units, drawing in experienced FOI and review staff as appropriate.

5. Department for Culture, Media and Sport (DCMS)

Making an accurate assessment of DCMS's progress and size of their backlog is difficult given the large volume of records they hold with unconfirmed dates (96,000 according to the most recent RTR, though DCMS have also quoted a lower figure of 45,000). Historically, their information management has been assessed unfavourably by The National Archives, both in 2010 and in late 2012, with a Departmental Record Officer being appointed only comparatively recently.

6. Department for Education (DfE)

DfE believes that it is on track to meet the 2023 deadline and expects to be meeting the transition timetable by the end of this year both for its education files and its children's files (transferred from DH). The most recent RTR supports this, showing no backlog of records overdue for appraisal or destruction.

DfE has a team of three reviewers, two of which are currently being trained. The key challenge for DfE is an increasing volume of paper records due for appraisal, roughly doubling each year. This, coupled with the coming requirement to appraise electronic records, presents a risk to DfE's compliance with the transition timetable.

Sensitivity mainly relates to data protection issues, and DfE reports that its retentions are largely of records relating to children's homes – which continue to be of business use.

On digital, DfE has made a preliminary assessment of its holdings. It believes that paper remained the 'authoritative' record until 2000, and the size of the DfE paper record does not begin to reduce until 2005 (due for transfer in 2025). Assuming that much of its electronic record between 1990 and 2000 duplicates its paper holdings, the pressures created by the need to appraise large volumes of electronic records will not be felt until later in the transition period. DfE notes the difficulty caused by the lack of any software designed to support appraisal and review of electronic records. It expects to employ macro-appraisal techniques for its electronic records, but notes that this increases the risk of material being released in error.

7. Department for the Environment, Food and Rural Affairs (Defra)

Defra believes that it is on track to meet the 2023 deadline and is well ahead of the transition timetable – owing to its use of macro appraisal. It expect sto be eight years ahead of schedule by the end of 2014. Currently Defra employs approximately $\frac{3}{4}$ FTE sensitivity reviewers.

While the most recent RTR shows that Defra has a backlog of around files 14,000 overdue for appraisal or destruction, it has attributed much of this to recent additions to its archive as a result of estate rationalisation and intake from its ALBs.

Defra notes that in 2015-16 it will reach the point where the assessment of its digital legacy will meet that of its paper legacy and will therefore need greater resource for, and focus on, electronic appraisal.

8. Department for International Development (DFID)

DFID reports that it 'is currently meeting the transition timetable' and envisages 'we will be able to meet future projected transition dates. DFID has an Information Management Unit (consisting of five staff) that covers all aspects of record management legislation (digital and paper formats) and support to DFID staff.' The most recent RTR does not show any backlog in files overdue for appraisal or destruction and only a small number of file overdue for transfer.

DFID levels of sensitivity referrals are low, but can vary over file review periods depending on policy considerations that Governments attached to the aid programme.

Physical preparation of records for transfer is outsourced, but all other review work is conducted in-house.

9. Department for Transport (DfT)

DfT expects to complete the transition by 2023. The most recent RTR shows a backlog of around 800 records overdue for appraisal or destruction.

Sensitivity of its records is generally low and therefore the costs associated with sensitivity review are negligible.

DCLG provide a shared records management service to DfT, which includes the review service and the shared outsourcing to a commercial service provider of the off-site storage of paper records.

10. Department for Work and Pensions (DWP)

DWP reports that it is currently 12 months ahead of the transition timetable – this is supported by its most recent RTR return to TNA. Sensitivity is relatively low, with around 100 records sent 'closed' or 'partially closed' to TNA each year (5-10% of the total transferred.) Most of these closures are due to sensitive personal information or sensitivities around policy formulation. Review resource is currently 1 EO Senior Reviewer and 4 AO Reviewers (though these staff also have other responsibilities). Retention and destruction of files is outsourced to Capita.

11. Department of Energy and Climate Change (DECC)

DECC's returns to TNA for the RTR suggest a backlog of records awaiting either appraisal or destruction and nearly 600 records selected for permanent preservation that are overdue for transfer. BIS runs DECC's records management service on a shared service basis, and so estimates of DECC's holdings and backlogs are based on a 13% share of the BIS catalogue. The review team at BIS was reduced to two part-time staff from April 2013, though a further reviewer was added from May 2014.

12. Department of Health (DH)

DH reports that it is 'well advanced' in moving to the new 20-year rule and has sufficient resource to meet the timescale. In its returns through the RTR process DH indicates that it has a backlog of records overdue for appraisal or destruction, though the backlog appears to be reducing.

The department has adopted macro-appraisal techniques to consider records at the class level, and a schema is applied to record series which are due to be reviewed. Their aim is to ensure that effort is focused on records which need file-by-file review, as they are likely to contain records which meet the selection criteria that The National Archives specifies. The department takes a thematic approach to some series, for example the policy and delivery files dealing with AIDS in the early 1980s, which can present challenges in the context of the 10-year transition, where series span several years.

DH records are generally of low sensitivity (other than personal data) and the department employs two full-time EO reviewers, supported by an HEO reviewing team leader. The robustness of the review process is verified by sample checking, and a full review of the few particularly contentious subject areas.

13. Foreign and Commonwealth Office (FCO)

FCO is not currently meeting the transition timetable and will not meet the 2023 deadline for full implementation of the 20-year rule. FCO has 600,000 legacy historical records (the 'special collections') and will be transferring selected files from this collection alongside its usual annual departmental transfers, with priority given to those files of greatest interest to historians and/or greatest demand in The National Archives' reading rooms.

All FCO departmental files and most of the special collections require sensitivity review, with classifications ranging from 'unclassified' to 'top secret'. They include significant volumes of diplomatically sensitive material in FCO files with a possible impact on the UK's international relations as well as material relating to the security and intelligence agencies. FCO has 29 part-time reviewers and is recruiting a further 12. FCO has outsourced file listing, cataloguing and physical preparation.

Individual sensitivity reviewers complete justifications for the closure or retention of FCO files. Reviewers initiate the referral of a file to other departments or agencies whenever they judge that a view of on potential sensitivity should be sought. All justifications are reviewed by a professional records manager who checks for compliance against relevant legislation before passing the justifications to FCO's Senior Sensitivity Reviewer for a further quality review. As well as completing justifications, reviewers also provide written instructions to redactors. A physical check is carried out against all files flagged for redaction to ensure justifications match the redaction instructions.

The first transfer of digital records is due in 2017. FCO believe that the first group of records, taken from a system called ARAMIS, which was in use between 1992 and 2000, is well organised and there is a good robust record. More recent records, stored in the iRecord system, are of greater concern, with gaps in the registry and duplicated records. FCO is looking to improve compliance and introduce automatic registering of documents, but anticipates that there will be gaps in the digital material.

14. HM Revenue and Customs (HMRC)

HMRC states that it is 'meeting the requirements of the 30 to 20 year timetable without difficulty, and with minimal resource impacts.' However, the most recent RTR indicates a backlog comes with the comment (from HMRC) that 'the figures are estimations only. HMRC may have considerably more records which we are unable to identify at present.'

The key area of sensitivity for HMRC is customer data. Only records that are marked 'Official' (previously 'Restricted') or lower can be transferred to The National Archives. Their most sensitive records are covered by a blanket authority issued by the Lord Chancellor, which enables HMRC to retain records beyond the 20 year rule period.

HMRC notes that it is a relatively small transferring organisation – typically one to two metres per year. Other than secure storage and destruction, no processes are outsourced.

15. HM Treasury (HMT)

HMT has been running an accelerated document review process. It expects to fall behind with the 1985 and 1986 releases (due in 2014) but thereafter expects to meet the transition timetable. The accelerated review has brought to light additional, pre-1984 records and so HMT now has a sizable backlog to clear.

The bulk of HMT's records are classified 'official' but they are privy to information from other departments up to 'top secret'. HMT has outsourced all routine work listing, cleaning and destroying files to Iron Mountain. For the practical review process, Iron Mountain lists the files, assists HMT with appraisal, flags sensitive files and carries out the agreed actions for any files. All decisions are taken by HMT staff.

All files assessed as sensitive are referred to HMT's Corporate Information and Records Management team for secondary review (and to other government departments as necessary.) All files, regardless of initial sensitivity, are reviewed again by a different person to the original reviewer for sensitivity prior to release.

The first tranche of digital files dates from 1997 – due to be transferred in 2020.

16. Home Office

The Home Office is conducting an accelerated review and therefore expects to have completed review of **all** records covered by the transition period by the end of 2015. Currently it is behind on transferring records due in 2014, but is significantly increasing the number of reviewers working on the records, bringing in 20 historic reviewers from the team previously reviewing documents for the Hillsborough Independent Panel.

With the exception of one series of mid-20th century naturalisation records, for which cleaning and listing has been contracted out, the Home Office has not pursued outsourcing, largely due to concerns about the quality of sensitivity review.

All sensitivity review work is subject to quality assurance by senior reviewers who review a 10% sample as well as material where issues are identified within the normal review process.

Paper was the default record format at the Home Office until 2003. Some digital material dating from 2001 may be selected for transfer during the transition period. Some sample reviewing of digital material has been carried out and because of the high percentage of sensitive material, it has been acknowledged that macro appraisal is unlikely to work, so it is likely that page by page reviewing will continue.

17. Ministry of Defence (MoD)

MoD states that it is 'on-track to deliver' against the 20-year transition, but the most recent RTR indicates a backlog of more than 40,000 records dated up to and including 1984 still to be either appraised or destroyed. MoD has allocated additional resources for review and transfer – doubling its staff resource - recruiting nine additional staff and providing increased funding for the retrieval of files and their preparation.

Sensitivity of records ranges from 'Unclassified' to 'Top Secret'. Non-personnel related records selected for transfer to The National Archives are typically classified 'Confidential' and above, and are therefore subject to page-by-page review. File storage up to and including 'Secret' is outsourced, but all other review and preparation processes are undertaken in house.

MoD carries out sensitivity reviewing of 17,000 regular files each year. An initial cull is carried out electronically, reducing the number to about 10,000. These are sent to Portsmouth where the senior reviewer goes through them and identifies specific

topics. The reviewers then thin out the material, and also review ministerial files. Each remaining file is then read on a line-by-line basis. The MoD review team includes some members employed for their subject matter expertise who have previously been civil servants or members of the armed forces. Large personnel or case record sets are dip sampled for sensitivity with decisions to release or withhold taken by Ministers, usually with a supporting public consultation. Other record sets are reviewed page by page. Team members are briefed by subject matter experts and work is allocated by theme. Five files per month per reviewer are subject to a quality assurance check. Issues may also be referred to the MoD branch or other government department concerned.

MoD does not expect to transfer digital records to The National Archives until 2022. It believes that there are likely to be gaps in the record from the time digital filing was introduced and some duplication with paper records.

18. Ministry of Justice (MoJ)

MoJ states that it is ahead of schedule in the transition from 30 to 20 years – this is generally supported by the most recent RTR, which indicates no backlog of files for appraisal or destruction, though around 5,000 files held by MoJ and selected for permanent preservation are overdue for transfer. In its response to the review MoJ states that ‘a small number of non-core legacy files are currently still being reviewed, however these are expected to be transferred by December 2014.’

The majority of MoJ records are classified ‘Official’ with only limited volumes classified ‘Secret’ or above. In relation to policy records, MoJ closes less than 10% of information. Of Crown Court records, around 90% of cases will be either closed completely or have some form of closure. Transfers rates are around 10% for policy files and 3-5% for Crown Court files. Very few records from the Royal Court of Justice are transferred to TNA and most of those are closed. The majority are either not retained or kept at RCJ if they relate to high profile cases.

All files are reviewed for sensitivity page by page. Each review team leader conducts spot checks on sensitivity review and advises on redactions. Once staff are fully trained their work is subject to a 10% spot check. All proposed redactions are checked by team leaders and sent to The National Archives for further checking before being sent to the Advisory Council.

Outsourcing is only used for storage (and for Judicial Committee of the Privy Council records, cleaning).

The first transfer of digital records is due in 2022 – there are approx. 7,000 digital folders for 2002. MoJ is taking part in a pilot for digital transfers with The National Archives. The pilot will also include testing of some redaction software.

19. The Northern Ireland Office (NIO)

The RTR indicates NIO has a backlog of nearly 200 files dated up to 1984 either awaiting appraisal or destruction and around 1,000 files selected for permanent preservation that are overdue for transfer. Review and selection is underway for 1985 and 1986 material due for transfer in 2014. Although NIO has very limited staff resources (three reviewers in total), their reviewers are all experienced and are also relied upon for cataloguing and drafting of LCI's.

NIO regularly consults with FCO, MOD and the Security Services, as well as Cabinet Office on the release of files.