

Closure On Transfer Application Form

Guidance Notes

1 Background

1.1 In January 2005 the Freedom of Information Act 2000 (hereafter FOI Act) is fully implemented. Under the FOI Act the default thirty-year access rule for public records will no longer apply and all records will be considered as open to the public on transfer to The National Archives unless an exemption is identified. The reasons why records, or extracts from them, need to remain closed after transfer must be justified under the FOI Act and not the Public Records Act. There will therefore be changes to the procedures for transferring closed records to The National Archives.

1.2 The main change is that the old criteria for extended closure¹ will be replaced by a number of FOI exemptions (including those related to the Data Protection Act and Environmental Information Regulations). These are described in Part II of the FOI Act. It is also possible that records fall under more than one of these exemptions. Some exemptions cannot be used in records when they are over 30 years old. These are listed in section 63 of the Act:

- s28 – Relations within the United Kingdom
- s30 (1) – (only covers part of exemption) Investigations and proceedings conducted by public authorities
- s32 – Court records, etc
- s33 – Audit functions
- s35 – Formulation of government policy etc
- s36 – Prejudice to effective conduct of public affairs
- s37 (1)(a) – (only covers part of exemption) Communications with Her Majesty, etc. and honours
- s42 – Legal professional privilege
- s43 - Commercial interests

1.3 Part II of the Code of Practice on the Management of Records under section 46 of the FOI Act details the arrangements which authorities should follow to ensure the timely and effective review and transfer of public records. Relevant sections are held at **Annex A**. References to the Public Record Office should now be taken to be The National Archives.

<http://www.dca.gov.uk/foi/codemanrec.htm>

¹ See *Access to Public Records* manual paragraph 4.3

1.4

The Departmental Record Officer (DRO)/nominated officer should discuss with The National Archives Client Manager any records for which an application for closure is to be made, and the grounds for the application. The Client Manager must whenever possible have access to such records, and will advise on appropriate closure periods. Under FOI, exemptions apply to information and not whole records so departments should consider redaction (see section 4).

2 Identifying exempt material

- 2.1 These guidelines have been designed to assist departments in completing the application for closure on transfer form. They do not give guidance on how to identify exempt information in records. For advice on how to apply exemptions to records, staff should contact their own FOI practitioners, or consult the websites of the Department for Constitutional Affairs (DCA) and the Information Commissioner's Office:

URL for DCA guidance (general)

<http://www.foi.gov.uk/>

<http://www.informationcommissioner.gov.uk/eventual.aspx?id=77>.

3 Closure periods

- 3.1 In determining what periods of closure are appropriate the DRO/nominated officer should consult guidance on The National Archives website (*until guidance is written use existing closure periods*).
- 3.2 The DRO/nominated officer must ensure that records are closed for the minimum period consistent with the exempt information identified in them. For example, a closure period designed to protect an individual from disclosure of sensitive personal information during his or her lifetime must be determined by the age of the individual at the date of the end of the record concerned.
- 3.3 Exemption applications for closure periods less than 30 years will be authorised by The National Archives Client Manager. Exemption applications for closure beyond 30 years old will be submitted to the Lord Chancellor's Advisory Council for approval.
- 3.4 The fact that a record has been transferred as closed for a stated period does not preclude its release before that period has elapsed should it be subject to an FOI Request For Information if the exemption(s) identified on transfer is believed to be no longer appropriate after consultation between The National Archives and the Responsible Authority.

- 3.5 If a fixed closure period is not appropriate on transfer, the department should identify a date at which it wishes to review closure status and decide whether a further exemption application is required. Departments will continue to be able to request from The National Archives details of records where the re-review date is due, to ensure such applications are made in a timely fashion.

4 Deletion or removal of exempt information from records

- 4.1 When a record contains a proportion of exempt information, but could otherwise be released for public inspection, and it is possible to arrange for the substance of the record to be made available without violating its integrity, an extract or redacted copy should be considered.

5 Responsibilities

5.1 DRO/nominated officer:

- a) To identify information in records prior to transfer to The National Archives which need to be closed on transfer and to prepare the application for closure on transfer form

5.2 Client Manager:

- a) To assist the DRO/nominated officer in preparing applications
- b) To be satisfied that proposals for closure fall within the relevant exemptions and guidelines
- c) To approve applications (by adding name to The National Archives assurer section on form) once they have been agreed

5.3 Records management department (RMD):

- a) To ensure that exemptions and guidelines are being consistently applied and application for closure on transfer forms are filled in consistently
- b) To ensure that applications are supported by sufficient detail to enable them to be put forward to the Advisory Council as appropriate
- c) When applications appear not to fall within the exemptions and guidelines, to discuss with the department whether or not they merit closure, or whether for the period proposed, and if necessary, inspect them; and
- d) To prepare the necessary exemption schedules for the Advisory Council or for input into the System for Access Regulation (SAR) that provides access data to The National Archives Catalogue and record ordering system

6 Applications for closure

- 6.1 A new form has been designed to replace the old extended closure form. At the bottom of this document you will find a sample application form. You can also contact your Client Manager or Records Management Executive (RME) for further guidance.
- 6.2 Forms should be completed electronically. An electronic copy of the form in Microsoft Excel format is available from The National Archives' website or from your Client Manager or RME.
- 6.3 If you are making an application to close records in more than one series you should use a separate form for each series.

7 How to complete the application form

- 7.1 See sample form for guidance. Departments should remember that FOI requests could be made for the information included on these forms and that technically the s66 consultation process would not automatically occur in such cases. As these forms are being processed electronically there is no need to keep all the data on one page. Columns can be expanded.
 - a) Firstly you need to add the name of the department transferring the records, the date of the application in the format DD/MM/YYYY, The National Archives series reference and series title and the contact details of the person filling out the form (including the name and telephone number of an alternative contact). The department code, date, series and piece number will act as a unique ID data for the form. It is important therefore not to duplicate these between forms
 - b) The box marked 'The National Archives assurer' should be left blank. Once The National Archives assurer (the transferring department's Client Manager) has approved the application they will add their name here (as the forms are all to be submitted electronically they do not need to physically sign the form)
 - c) Column 1, piece numbers – Into this column you should enter the piece numbers of the records you wish to close (each different piece number to go on a separate line). Entries should be in piece number order rather than closure period order
 - d) Column 2, extract details – If you have extracted material from a piece for closure then you need to enter descriptive details of the extract here. These details could include the department's paper reference or page numbers and the date/s of the extract if known
 - e) Column 3, provisional item number – If you have extracted material from a piece for closure then you will have given it a provisional Catalogue item number. Enter this number here

- f) Column 4, covering dates – Enter the covering dates of the piece, or parent piece if item, here
- g) Column 5, closure period requested – Here you need to enter the closure period being applied for. For items this will be calculated from the final date of the piece rather than the item. Departments should note that however many exemptions are cited, only the longest closure period is required
- h) Column 6, date due for release or re-review – Enter the year, the first working day of which the piece/item is due to be released (dd/mm/yyyy) or the year by which you are going to have reviewed the piece/item again (this should be one year less than the opening date to allow the piece/item to be reviewed before the closure period runs out)
- i) Column 7, FOI exemptions – Here you need to list the exemption/s under which the application falls (this includes exceptions under the Environmental Information Regulations as appropriate). Where a record falls within more than one exemption, each should be stated. You must give full details of the exemption/s as listed in Part II of the Act. With some of the more complex exemptions, just listing the section number will not be sufficient (s27 for example contains numerous subsections). You need to list the section number and any subsections for example, s27 (1) (a) as appropriate
- j) Column 8, justification – In this column you need to justify the closure of the record. If closure is required for a qualified exemption then the reasons why the public interest is in maintaining the exemption should be stated. Occasionally the justification itself will contain exempt information. If this is the case and you do not want this information to appear on The National Archives Catalogue but remain as closed information in the SAR database then you must indicate this here. If there is any information where The National Archives will not be able to confirm or deny it holds the information under S 1(b) then the department should discuss appropriate arrangements with the Client Manager
- k) Column 9, The National Archives assurer will add any relevant comments to justify/support the application

7.2 Completed applications should be passed to the Client Manager for approval before any transfer takes place.

8 **Future guidance publications** (and discussion issues for workshops)

8.1 From The National Archives:

- Redaction toolkit

- Closure periods guidance
- Item cataloguing guidance for extracts

8.2 From the Department for Constitutional Affairs (DCA):

- Exemption guidance

Annex A

<http://www.dca.gov.uk/foi/codemanrec.htm>

11.7 If the review results in the identification of specified information which the authorities consider ought not to be released under the terms of the FOIA, the authorities should prepare a schedule identifying this information precisely, citing the relevant exemption(s), explaining why the information may not be released and identifying a date at which either release would be appropriate or a date at which the case for release should be reconsidered. Where the information is environmental information to which the exemption at Section 39 of the FOIA applies, the schedule should cite the appropriate exception in the Environmental Information Regulations. This schedule must be submitted to the Public Record Office prior to transfer which must be before the records containing the information are 30 years old..... Authorities should consider whether parts of records might be released if the sensitive information were blanked out.

11.8 In the first instance, the schedule described in 11.7 is to be submitted to the Public Record Office for review and advice. The case in favour of withholding the records for a period longer than 30 years is then considered by the Advisory Council. The Advisory Council may respond as follows:

- a) by accepting that the information may be withheld for longer than 30 years and earmarking the records for release or re-review at the date identified by the authority;**
- b) by accepting that the information may be withheld for longer than 30 years but asking the authority to reconsider the later date designated for release or re-review;**
- c) by questioning the basis on which it is deemed that the information may be withheld for longer than 30 years and asking the authority to reconsider the case;**

- d) by advising the Lord Chancellor if it is not satisfied with the responses it receives from authorities on particular cases;
- e) by taking such other action as it deems appropriate within its role as defined in the Public Records Act.

11.11 When an exemption has ceased to apply under section 63 of the FOIA the records will become automatically available to members of the public on the day specified in the finalised schedule (i.e. the schedule after it has been reviewed by the Advisory Council). In other cases, if the authority concerned wishes further to extend the period during which the information is to be withheld in accordance with the FOIA, it should submit a further schedule explaining the sensitivity of the information. This is to be done before the expiry of the period stated in the earlier schedule. The Public Record Office and Advisory Council will then review the schedule in accordance with the process described in paragraph 11.8 above.

Application for closure on transfer

under the Freedom of Information Act 2000

Transferring department	
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Date of application	
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Series ref	
Series title	

Departmental contact details	Name		Alternative contact	
	Tel		Name	
	email		Tel	

The National Archives assurer		
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1	2	3	4	5	6	7	8	9
Piece numbers	Extract details (if relevant)	Provisional item number (if relevant)	Covering dates	Closure period requested	Date due open or for reconsideration	FOI exemption/s	Justification (indicate if justification cannot be made public)	The National Archives assurer comment

This schedule should be used for records from one series. The records are to be listed in piece number order. The schedule should be sent to your assurer at The National Archives.

