

The '30-Year Rule' Review

Consultation response by the Society of Archivists

Introduction

The Society of Archivists supports the review of the 30 Year Rule and with it the requirements for transferring central government records to places of public deposit. The Society applauds the aims and objectives of the Review as set out in its 'Terms of Reference' which will encourage a radical review of public authorities' record keeping practices. The Society's view is that the creation of records in electronic formats combined with the shifting culture of accountability arising from the Freedom of Information Act 2000 (FOI) requires a review of the existing Public Records legislation and of the systems underpinning the way in which public bodies implement that legislation.

The impact of the Freedom of Information Act 2000

In 1967 when the access restriction on public records was reduced from 50 years to 30 years, public records were perceived as being retained for study by academic historians. It was felt that the passage of a whole generation (30 years) was needed to ensure that historical enquiries were sufficiently unbiased and to ensure that civil servants were protected from disclosure throughout their career so that they could properly provide 'full and frank' advice. However the impact of the Freedom of Information Act 2000 (FOIA) means that public records are no longer the preserve of historians. Contemporary history is immediate and civil servants, while partly protected by the Act, no longer have a guarantee of absolute confidentiality for the whole of their working life.

The 30 Year Rule has, in effect, already been made redundant by the FOIA. Under the Act, public information is open unless an appropriate exemption applies and each case must, therefore, be treated on its merits. In addition, the volatile nature of electronic records means that there should be archival involvement at the point at which a system is implemented and a record is created. The Society urges the Reviewing Committee also to note the proposals for new national archives legislation put forward by The National Archives (TNA) in 2003 and 2004. These sought to create an effective national legislative framework for managing and retaining the electronic records now created by modern governments.

Reducing the closure period

The Review's proposal to lower the general access period to 15 years reflects paper-based thinking. It does not take into account the change that the move to electronic recordkeeping has made archives and records management practice. Electronic records need to be captured and designated as archives at creation to guarantee their longer term preservation. A number of national governments have already begun to establish such systems and to develop appraisal frameworks that have moved away from the traditional phased, life-cycle based, review which supports the 30 Year Rule. There is a lively professional debate about whether it is necessary for records to be transferred from the system in which they were created to specifically archival custody.

The Society's believes that reviewing records at a fixed point after their creation (possibly not until 15 years or more) could result in the loss of significant information, either because records

are not captured in the first place, the media on which they are stored deteriorates, or authorities fail to migrate records to new systems as technology changes.

The Society acknowledges that TNA is working to overcome these challenges. We believe that a transparent approach which places archival engagement at system design and record creation level should become mandatory. Section 46 of the Freedom of Information Act, provides for this by requiring TNA to produce a Records Management Code of Practice. However, the mandate for enforcing this Code should be strengthened. Physical transfer of records has become less important. The key issues for the Review should be about the power to capture records and the information they contain for future use and, ultimately, as archives, and about establishing mechanisms to ensure that information is released within appropriate timeframes in accordance with public interest tests set out in legislation.

Early archival involvement should ensure usable, managed records and information that support the administration of an efficient, economic and accountable modern government. Only a small percentage of government records is selected for permanent retention and many are destroyed before they are 30 years old. Systematic management of records will ensure that public bodies capture and retain key information and that they destroy or purge redundant records from systems as soon as possible. In this context, the Society stresses the need for more effective and centrally-led records management practices in central government departments and agencies, ensuring the consistent creation, capture and control of records, enabling them to maintain their integrity, authenticity, trustworthiness and usability.

The Society would like to stress that identifying records as archives at creation does not mean that records series containing personal or other sensitive data should not be closed for longer periods.

The practical and resource implications of the proposed change

The Society would support the shortest practicable access period and point of transfer, while encouraging archival engagement at the point of record creation. However, this is subject to considering and accounting for the following concerns under any revised terms:

1. The information provided in the consultation documentation assumes the change will affect only TNA. It makes no mention of local government. However, local record offices and other designated places of deposit also receive government agency records (such as those of the former Commission for New Towns, now English Partnerships). If the term of closure is reduced, the records of these agencies may need to be transferred sooner with implications for storage space and for staff to provide a retrieval service to the agency. Reducing the closure period to 15 years would immediately double the workload of those dealing with the appraisal and transfer of records. Our members and colleagues in the wider public sector are already subject to reduced funding and resources. They would be unable to cope with any increase in workload, let alone one so large. Consequently reducing the 30-year rule raises significant questions about its impact on both national and local resourcing requirements.
2. Any changes in the FOIA will have an impact on not just government records but also on recorded information held by all public authorities. The Review centres on government departments but the records of other public bodies should also be considered, including, for example, those of the NHS, the Courts Service, the Prison Service etc. It would be confusing for the sector to have records transferred to TNA at creation, 15 or 20 years and then for other public records held locally to be closed or not transferred for 30 years.

Alterations, while beneficial in the 'public interest' and in a spirit of transparency across all public sector bodies, have clear resource implications.

3. The framework for altering the 30-Year Rule and the underlying intentions of the Committee are unclear. The Society notes that a change to the definition of a "historical record", as specified in section 62 of the FOIA would automatically result in the earlier release of many record series, if altering it were to affect the cut-off date for exemptions under section 63. Such alterations would be simplistic and may cause problems as there is a different rationale behind each separate exemption. The Society of Archivists could only support a change to these exemptions after more discussion and debate. These are not absolute exemptions and, therefore, many record series could still be released, as the Society has suggested, by applying appraisal criteria at the point of creation. The Society is in favour of the automatic and early release of information wherever possible.
4. There may be reasons for maintaining some exemptions up to the 30 year period, such as those for records covered by legal privilege. Releasing the bulk of other records would have little direct impact on the business of government. For example, records protected by exemptions s.35 and s.36 could largely be released after 15 years. There may occasionally be circumstances which mean that a document should remain closed. This is particularly the case when documentation was drafted under a presumption of confidence, which, in the case of inter-government administration, cannot be protected by the exemptions provided under s.41. Consequently, the Society supports maintaining the possibility of referring to exemptions, when appropriate, while creating a framework and culture of openness in accordance with the legislation. In essence, information should be opened unless there is a demonstrable public interest in its remaining closed.

Clearer instructions and guidance must be introduced to make the regime for releasing records to the public more effective. The existing legislative framework would make it possible to stipulate that all records must be released 15 years after creation unless there was an objective continuing public interest in keeping them closed. However, we would favour developing a more sensitive and value-based approach to releasing records, rather than applying a shorter, but equally rigid, closure period.

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