



## **GUIDANCE ON FREEDOM OF INFORMATION, PUBLICATION SCHEMES AND PAID RESEARCH SERVICES**

### **1 Purpose of this guidance**

The purpose of this guidance is to

- (i) Set out options for archives offices to provide a paid research service in response to an FOI request relating to the archives;
- (ii) Provide text agreed with the Information Commissioner's Office as suitable for use in publication schemes; and
- (iii) Explain how to opt-in to the agreed text

### **2 Some working assumptions**

The starting point for this guidance is agreement with the Information Commissioner's Office that:

- Archives offices can continue to expect enquirers to visit the office to do their own research, supported by expert advice and guidance from the archives office
- An alternative should be provided for enquirers unable or unwilling to do this
- This alternative can be either provision of an in-house paid research service or referral to independent researchers who undertake research on commission. Details of the alternatives on offer should be included in the authority's Publication Scheme. (Note that if you provide a free research service there is no need for special provision in your Publication Scheme)
- When the archives office receives an enquiry which falls within the definition of an FOI request, it should make an initial quick assessment of whether the requested information is likely to be held. If it is likely to be held, the exemption at section 21 (information already reasonably

accessible) can be claimed and one or both of the above alternatives offered to the enquirer

- When the enquiry is a request under the Environmental Information Regulations, Regulation 6 paragraph (1)(a) serves as the equivalent to section 21
- Enquiries which seek information about the enquirer fall under the Data Protection Act and need no special provision in the Publication Scheme.

### **3 Text for use in Publication Schemes**

#### **3.1 In-house paid research service**

We recommend that archives offices offering a paid research service do so through the publication scheme. The disadvantage of claiming section 21 and taking any subsequent paid research outside FOI altogether is that the claim may be open to challenge if, after a search, it turns out that the requested information is not held or, although held, is exempt. This problem does not arise if the Publication Scheme entry for the archives specifies that the purpose of the research is to enable the archives office to confirm or deny that the requested information is held and that exemptions may apply. Archives offices have a more secure basis for charging for research if they follow this line.

The Publication Scheme entry for the archives needs to contain the following details:

- A brief description of the archives covered by the class. This need not itemise the different types of archives held; a generic description is enough
- Whether on-site access to the information (i.e. the archives, in original and/or surrogate form) is possible and, if so, whether this is free or subject to a charge (but remember, if planning to impose a charge, that the Environmental Information Regulations prohibit charging for on-site access to environmental information)
- Whether research by the archives office to find specific information is free or subject to a charge and, if a charge applies, what sort of charge
- Whether all the archives are available for general access or (more likely) some are closed in whole or in part and that closures will be reviewed on request
- How copies may be obtained and what charges apply

- Where to direct enquiries and requests for review of closed records

Authorities have structured their publication schemes in different ways so a model entry is not possible. However, the Information Commissioner's Office has agreed that the following form of words within an entry will enable a claim of section 21 and imposition of a research fee through the publication scheme:

- Free access to original records or copies of records in our search rooms *<insert alternative form of words for location if necessary>*.
- We charge a fee to carry out the research necessary to tell you whether or not we hold specific information *<you can make it 'we may charge' if the fee is not routinely charged>*. We also charge for copies of documents. Our fees are set out *<insert details of where charges are specified>*
- Most records are available for general access but a few are closed in whole or in part because information in them is exempt information under the FOI Act or the Environmental Information Regulations. Closures are usually indicated in our Catalogue and will be reviewed on request *<delete 'are usually indicated in our Catalogue and' if this does not apply>*. There is no charge for this review.
- Enquiries and requests for review of closed records should be sent to *<insert details or, if they are given elsewhere, cross refer to where they can be found>*

### **3.2 Independent researchers**

If you do not offer a paid research service but instead refer people to independent researchers, we recommend that you do so through the publication scheme for the reasons set out above.

The publication scheme entry for the archives should contain the following form of words:

- Free access to original records or copies of records in our search rooms *<insert alternative form of words for location if necessary>*.
- We do not undertake detailed research for enquirers but we can provide the names of independent researchers who do this on payment of a fee to be agreed with you. The purpose of their research is to discover whether we hold the information you seek and to obtain a copy or prepare a summary of it for you. Copies of documents are available on payment of a charge which is set out *<insert details of where charges are specified>*

- Most records are available for general access but a few are closed in whole or in part because information in them is exempt information under the FOI Act or the Environmental Information Regulations. Closures are usually indicated in our Catalogue and will be reviewed on request *<delete 'are usually indicated in our Catalogue and' if this does not apply>*. There is no charge for this review
- Enquiries and requests for review of closed records should be sent to *<insert details or, if they are given elsewhere, cross refer to where they can be found>*

### 3.3 Hybrid option: in-house research service and independent researchers

There are two circumstances in which the hybrid option might apply:

- (i) You refer all enquirers to independent researchers except when the enquiry relates to records that are not available for general access, in which case the search can only be undertaken by you. If you want to charge for such research the wording of the second bullet point should be as follows:
  - We do not undertake detailed research for enquirers unless the enquiry relates to records that are not available for general access. In such cases we charge a fee to carry out the research necessary to tell you whether or not we hold specific information. In all other cases we provide the names of independent researchers who carry out such research for a fee. We provide copies of documents on payment of a fee. Our fees are set out *<insert details of where charges are specified>*
- (ii) You offer enquirers a choice between your paid research service and independent researchers where enquiries relate to records likely to be available for general access. Enquiries relating to closed records can only be handled by you. In this case the wording of the second bullet point should be as follows:
  - We charge a fee to carry out the research necessary to tell you whether or not we hold specific information *<you can make it 'we may charge' if the fee is not routinely charged>*. We also charge for copies of documents. Our fees are set out *<insert details of where charges are specified>*. If your enquiry relates to records likely to be available for general access we also provide the names of independent researchers who, on payment of a fee agreed with you, will undertake this research.

## 4 How to opt-in to the text in the options above

The Information Commissioner's Office has agreed that you can amend your publication scheme entry for the archives without re-submitting the full scheme for approval if you amend the entry along the lines set out above. This arrangement does not apply if you wish to vary the text above other than to make minor textual amendments.

To get approval of the revised entry, send an email to [FOI-enquiries@ICO.gsi.gov.uk](mailto:FOI-enquiries@ICO.gsi.gov.uk) with the subject line Publication Scheme Amendment – Archive. In the body of your email please give the following information:

- Name of the authority whose publication scheme is being amended
- Title of the class being amended
- Name and postal address of the archives service
- Which of the above options you are adopting

If you have any questions about this guidance please contact Susan Healy or the National Advisory Service at The National Archives or Phil Catling at the Information Commissioners Office. Their email addresses are [susan.healy@nationalarchives.gov.uk](mailto:susan.healy@nationalarchives.gov.uk), [nas@nationalarchives.gov.uk](mailto:nas@nationalarchives.gov.uk) and [Phil.catling@ico.gsi.gov.uk](mailto:Phil.catling@ico.gsi.gov.uk) respectively.

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