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Guidance intended for Public Inquiries held in Northern Ireland

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1) Introduction

- 1.1) This guidance is primarily for the attention of the Secretary of the Inquiry. However, its relevance to Inquiry (or sponsor department) staff with key responsibilities for the management of information and records should be emphasised.
- 1.2) Public inquiries are conducted on behalf of NI Departments or the NI Executive, which means that records created or sent to the Inquiry are 'public records' as defined by the Public Records Act (NI) 1923. Those responsible for public records, including the Chairman of the Inquiry, have a duty to ensure that there are suitable arrangements in place for the selection of any records which should be permanently preserved. As outlined in the *Inquiry Rules 2006* (see Appendices), it is also the duty of the Inquiry Chairman to make sure that 'the record of the inquiry is comprehensive and well-ordered.'
- 1.3) In certain instances, specific Inquiry legislation may be passed e.g. Inquiry into Historical Institutional Abuse Inquiry Act (Northern Ireland) 2013 and Inquiry statutory rules, setting out records management responsibilities.
- 1.4) Records created during the course of a Public Inquiry (and subsequently selected by and transferred to the Public Record Office of Northern Ireland (PRONI) under the terms of the Public Records Act (NI) 1923) are highly significant as historical documents, for several key reasons.
- 1.5) They provide an evidentiary base, reflecting the work of the Inquiry, why it was set up, its terms of reference, the expectations of the community within which it acted, the values it sought to uphold and ultimately, the judgements, assessments and decisions it communicated to the wider public in the course of its conclusions.

- 1.6)** They also provide ‘enduring historical research value’ to future generations, evidencing the activities not only of the Inquiry itself, but shining light on such things as social and moral values, emerging human rights issues, criminal or civil law, the prevailing political climate and the various (often complex) issues faced by NI society during a discrete period in time.
- 1.7)** As can be seen within the wider public sector, records / information / knowledge management has now adopted much in the way of electronic (digital) technology. This impacts upon those creating records in the course of any Public Inquiry in NI. The cost and overall good management of such digital records must be carefully considered at the very beginning of an Inquiry, and strictly monitored throughout, until the work of the Inquiry is concluded.
- 1.8)** In the public sector, the proper and appropriate management of information / records is in keeping with the *section 46 Lord Chancellor’s Code of Practice* in the *Freedom of Information Act 2000 (The Section 46 Code)*. Those responsible for record creation and management in newly set up Public Inquiries should endeavour to familiarise themselves with the [Section 46 Code](#), and the various recommendations for good practice therein.
- 1.9)** Policies and procedures should be in place from the inception of an Inquiry to ensure that all records created by the Inquiry comply with the relevant legal requirements and the *Section 46 Code* and the general information / records management guidance available through PRONI. It is recommended that those setting up an Inquiry consult PRONI for advice and guidance at an early stage, to ensure good practice in records management is embedded in the Inquiry process.
- 1.10)** In relation to digital records (whether these are ‘born digital’, or physical records which have been converted to a digital format), it is important to bear in mind that the same principles of good information management apply. The Inquiry should have in place policies and procedures

governing the creation, secure storage, access and disposition of these records.

1.11) The Section 46 Code outlines a number of reasons why good information and records management is vital to a Public Inquiry, and these factors should be considered when the Inquiry is established.

1.12) The Inquiry should have in place an officer conversant with the records, and should be appointed to lead and advise on information and records management matters. The Inquiry Chairman and Secretary will share the following duties and responsibilities, including:

- Establishing a corporate records management policy and procedures document (a document which must be made available to all staff once the final draft is agreed)
- Seeking appropriate funding (e.g. devising a Business Case for appropriate funding/staffing) both for managing the inquiry record while the inquiry is active, and for the appropriate disposal of the Inquiry record, including any preparatory work which is to be undertaken before the Inquiry Record transfers to PRONI
- Recruiting appropriate staff and providing appropriate training
- Ensuring that Inquiry staff (at all grades) are aware of their responsibilities in effectively managing their records
- Devising a file plan or filing system
- Establishing a retention and disposal schedule
- Liaising and consulting with the Public Record Office of Northern Ireland

1.13) Risks of not complying with the Section 46 Code include:

- Enforcement action by the Information Commissioner
- Reputational loss for the Inquiry

- Non-compliance with legislation, policy and best practice (National or International Information standards)
- Poor or uninformed decision making
- Excessive storage costs / requirements
- Loss of business continuity
- Failure to apply adequate security measures to information
- Information loss
- Inconsistent or poor levels of service

1.14) Benefits of complying with the s. 46 Code include:

- Inquiry staff can access information when required
- Provision of secure, authentic records which demonstrate accountability
- Store and protect historical records of past activity (to be transferred eventually to PRONI)
- Support evidence-based decision making by providing information of past actions or decisions
- Optimise use of electronic and physical storage
- Reduce search costs and thus optimise use of Inquiry staff time
- Compliance with the requirements of the FOIA and Data Protection Act 2018, and any other relevant legislation

2) Roles and responsibilities

2.1) When the Inquiry is first established, all roles and responsibilities should be outlined clearly. It is recommended that Inquiry staff meet with PRONI and the relevant sponsor department, to agree how records and information created or received by the Inquiry will be effectively processed and managed.

2.2) There are several key areas where roles and responsibilities must be clearly outlined and agreed:

2.2.1) Inquiry Chairman: It is the duty of the Inquiry Chairman to ensure that all activities of the Inquiry, and all records obtained and created by the Inquiry are complete, authentic and accessible. The Chairman should establish a 'secretariat' that will have complete responsibility for the management of all Inquiry information and records. Finally, the Chairman must arrange for the eventual transfer of the records to PRONI, or to the relevant sponsor department or organisation, at the conclusion of the Inquiry

2.2.2) Inquiry Secretary: It is the duty of the Inquiry Secretary to ensure that there are in place policies and protocols for the effective management of Inquiry information and records. The Secretary must ensure that Inquiry staff are fully trained and aware of the legal and good practice requirements of information management in regard to the record of the Inquiry. Finally, the Secretary should ensure that arrangements are in place at the conclusion of the Inquiry for the proper identification and archiving of records which have been selected for permanent preservation at PRONI. Finally, the Inquiry should have responsibility for considering whether the website will be archived.

- 2.2.3) Sponsor Department:** It is the role of the sponsor department to provide advice on information and records management policies and procedures in the department and in the Inquiry. The department should agree with the Inquiry which records will be transferred to PRONI, and should oversee the eventual transfer of records to PRONI. Finally, the sponsor department must ensure that records identified for destruction are deleted or shredded in accordance with retention and disposal schedules and in compliance with the sixth Data Protection Principle
- 2.2.4) Public Record Office of Northern Ireland:** PRONI has a statutory role pursuant to The Disposal of Documents Orders (NI) 1925 and the Public Records Act (NI) 1923 in providing advice on best practice and standards in the management of public records. PRONI will liaise with Inquiry staff and dispense guidance on information management, cataloguing, sensitivity review and preparation of records for transfer to PRONI. PRONI should be consulted, and agree with the selection of Inquiry records for permanent preservation.

3) Inquiry Information / Records Management policy

- 3.1)** It is important that the policy is developed at the outset, to ensure that there is in place an appropriate framework and principles are identified for the effective management, review and transfer of Inquiry records.
- 3.2)** The policy should sit under a statement of commitment by the Inquiry, to uphold principles of best records management practice which have been laid out under the Lord Chancellors Code of Practice under s.46 of the FOI Act (as discussed under **(1)**).
- 3.3)** The policy is important as it acts as a mandate for supporting processes and procedures, while demonstrating the value of these to all Inquiry staff. Furthermore, it ensures that there are robust controls in place to govern the creation of digital records (especially when considering the areas of completeness, authenticity and accessibility).
- 3.4)** The policy must include:
- A statement of commitment to best practice in records management
 - The roles and responsibilities outlined under **(2)**, for the effective management of Inquiry records
 - An outline of protocols, processes and activities to create a fully comprehensive record of the Inquiry
 - Details of how the information created and received by the Inquiry must be managed in such a way that it is accessible and meaningful, in the right format
 - Detailed specification and requirements for digital information management must be recorded. This includes email, website content and other scanned material
 - Clarification that the Inquiry records which may be subject to the Public Records Act (NI) 1923

- The importance of compliance with legislative requirements (FOIA, Data Protection Act, etc.) as well as best practice.
- Details of how requests for access to information would be dealt with.
- Details of how the records will be stored and archived.

4) Creation of records

4.1) The ISO 15489-1:2001 defines **records** as information created, received and maintained as evidence and information by an organisation or person, in pursuance of legal obligations or the transaction of business. [1] In terms of Public Inquiries, this could be defined as anything which contains information (in any media) which has been created as a result of any Inquiry activity.

4.2) Records created during the course of the Inquiry should possess the same essential criteria. It should be noted that all of the below properties and qualities can apply regardless of the record's format, whether it is a sheet of paper, email, and photograph or database entry:

- Content – (i.e. information or data) the record must contain information which is meaningful and relevant
- Context – it must be possible to ascertain how the information/record relates to other records and to the Inquiry or other organisation which created it, and that it is clear how this information relates to the overall work of the Inquiry
- Structure – There must be an inherent logic to the way in which the information it contains - and the metadata which is likely to define its context - are laid out. The information must possess an understandable and logically presented structure.
- Authenticity – It should be possible to identify, and preferably prove, the process which created the record and who its authorised creator was.
- Completeness – The record should contain all of the content required to act as evidence of the transaction it is documenting. This does not mean that one record must contain everything to which it relates; simply that it is complete in its own terms.
- Fixity – Once declared as a record its content should no longer be altered or changed in any way. It is in this way that its evidential value is preserved (by ensuring that the content of a

record remains exactly as it was at creation). There must have been no unauthorised (and unrecorded) alterations to the information

- Reliability – It is important that the content of the record can be relied upon as an accurate representation of the Inquiry's transactions, and may be legally reliable

4.3) During the Inquiry, records should be kept systematically. For example:

- Paper transcripts of evidence heard during various days should be kept in distinct files or boxes, with each day separated ('File 1' contains transcripts of evidence heard on Day 1, 'File 2' contains transcripts of evidence heard on Day 2, etc.)
- Evidence submitted by 'other organisations' might be kept in separate boxes / files according to the organisation ('Box 1' = evidential papers submitted by the 'X' Health and Social Care Trust, 'Box 2' = evidential papers submitted by the 'Y' Health and Social Care Trust, etc.)
- Photographs, dvds or cctv footage, etc. may be retained according to their subject or location, or in one distinct box / file.
- Digital records must be arranged in relevant, accurately titled folders, or 'containers'. For example, email from one source might be stored in a separate folder.

4.4) Inquiry staff should arrange records according to their *original order*, (this may be chronological, by topic, etc.) and ensure that all papers are included. It is this basic arrangement which assists the archivist and then future researchers in accessing and evaluating the content of a specific collection of records.

4.5) For digital records, it is important to adopt the correct system to manage the creation, manipulation, access and disposal of records, whilst also offering a clear audit trail. Ultimately, this system should ensure that records of enduring value are preserved for transfer to PRONI.

- 4.6)** Digital records should be created in recommended file formats, whether written document (for example, Inquiry transcript or report) or other media (for example, photograph, interview recording, CCTV footage or other digital product). PRONI may be consulted regarding the list of acceptable digital file formats. This also extends to specially formatted material, such as virtual simulations and computer graphic images, where it is preferable to seek software that is wholly compatible with the EDRMS.
- 4.7)** Electronic records (such as email correspondence) should be created and preserved in exactly the same manner as any other record. The Inquiry will inevitably correspond with a multitude of organisations and individuals, and it is vital that this is preserved within the EDRMS.
- 4.8)** The EDRMS should keep accurate records of all changes to digital documents, who made the changes and when.
- 4.9)** There should also be a schedule of information which has been uploaded to the Inquiry's EDRMS. Documents should be catalogued and allocated reference codes (alpha numeric or numeric), which allow ease of access, both for the Inquiry and for those subsequently examining the records (other Official organisations, sensitivity reviewers, PRONI, researchers, etc.). Also, it should be clearly explained where some documents may not have been loaded to the EDRMS for security reasons.
- 4.10)** The EDRMS should ideally support the following features:
- Usable – Inquiry staff must be able to easily create, manipulate and search for information
 - Accessible – information must be readily available by Inquiry staff, through adequate search functionality
 - Structured – there must be a logical structure to the system, using a classification scheme, where records are created and saved according to function

- Complete – all records, and the information contained therein should be included on the system
 - Secure – the system should offer robust protection of all information, and if necessary extra protection for high sensitivity information
 - Auditable – there must be clear metadata showing when the record was created, who created it, have any changes been made, and what will happen to the record post-Inquiry, such as transfer status
 - Managed – the system must incorporate full information management functionality, with a designated responsible officer who has the authority to perform higher tasks (deletion, transfer, audit, etc.)
- 4.11)** The Inquiry's sponsor department may provide a dedicated EDRMS, or the Inquiry may opt to use another solution. PRONI will advise on the implementation of the Inquiry's chosen solution – EDRMS or otherwise. Irrespective, the system must meet the requirements of the Inquiry.
- 4.12)** Access controls. Adequate and robust measures should be established to control access to Inquiry information. The file plan should help the inquiry to comply with the seventh data protection principle, which requires precautions against unauthorised or unlawful processing, damage, loss or destruction. Metadata should provide clear instruction as to what level of staff can get to specific, perhaps highly sensitive information.
- 4.13)** Publishing digital records. Evidence heard in open hearing (and any non sensitive information) should be published on the Inquiry website, as soon as possible.
- 4.14)** PRONI's Digital Preservation team will collaborate with the Inquiry to ensure that the website is preserved by the PRONI web archiving project. It should be noted that this cost would be met by the Inquiry.

- 4.15)** The Inquiry must maintain detailed records of any documents which during the course of the Inquiry were redacted (this does not refer to those records recommended for closure during the transfer phase). Closed parts of any document must be protected and kept separately, with accurate storage data to allow the closed part of a document to be reunited with its open redacted counterpart, before the final transfer to PRONI.
- 4.16)** Receipt of digital records from outside the Inquiry. Evidence, submissions, witness statements, briefs for counsel, requests for information, legal advice or other material will be forwarded to the Inquiry, and may be in digital format. It is vital to effectively manage this information (and associated records) in the same methodical manner as information that is created by the Inquiry.
- File attachments should be saved to the EDRMS along with the email
 - How the information is structured, controlled and managed in an EDRMS or other solution is paramount
 - Maintain a record of copyright status of evidence / other papers submitted to the Inquiry. This should ideally be recorded in the relevant metadata field. PRONI's capability to provide access to such records may be limited by any lingering uncertainty on copyright
 - For recommended formats, please contact PRONI's Digital Preservation team, who will advise. PRONI may not be able to accept certain formats for permanent preservation.

5) Retention and Disposal Schedule

- 5.1)** The ultimate disposition of all records (either created or received from other organisations / individuals during the course of the Inquiry), must be considered at the outset.
- 5.2)** Records must become subject to an agreed *Retention and Disposal Schedule*. This schedule protects significant information for permanent preservation, whilst ensuring that low level material is destroyed correctly. It identifies all types of record created by the Inquiry (whether digital or paper, etc.), and assigns a 'final action' to each type:
- Transfer to PRONI
 - Appraisal by PRONI
 - Destroy
 - Transfer to sponsor department (if applicable)
- 5.3)** Disposal does not just mean 'destruction'. Disposal includes the transfer of records selected for permanent preservation to PRONI. Therefore, the retention and disposal schedule is the authority not just for destroying records, but also for preserving them.
- 5.4)** Once the disposal schedule(s) has been drafted by the Information/ Records Manager, PRONI should be invited to quality assure its contents.
- 5.5)** The disposal schedule is agreed with PRONI, and implemented at the beginning of the Inquiry's work. See below guidance on creating and implementing disposal schedules
- 5.6)** PRONI has an important role in relation to disposal schedules:
- To ensure that the schedule includes all the records created by the public authority

- To ensure that disposal recommendations are appropriate (i.e. that the records concerned are located in the correct disposal category: destruction, appraisal or permanent preservation)
 - To ensure that the final action dates are appropriate
- 5.7)** Once the Information/Records Manager and PRONI agree changes to the draft, the disposal schedule can proceed to signing. PRONI staff will also wish to satisfy themselves that appropriate steps are being taken by the public authority to ensure that records are kept in good physical condition, and that good filing practices are in place.
- 5.8)** The schedule details records concerned and the actions to be taken. Further information about the creation of a Retention and Disposal Schedule can be found in [Guidelines for the development of Retention and Disposal Schedules](#). Appendix A of this document shows a sample layout of records in a Retention and Disposal schedule.
- 5.9)** For the most part, the schedule must identify and describe each record collection or file series, not individual records. Of course, there will be exceptions to this general rule. Where individual records or files have been selected for permanent preservation, it makes sense that they are identified and described clearly on the schedule. When the time comes for the destruction or appraisal of the record collection or file series of which they form a physical part, it will be much easier to sift them out.
- 5.10)** The Inquiry must agree with PRONI the steps required for the transfer of selected material to PRONI.
- 5.11)** What follows is a comprehensive list of those record types which must logically feature on the retention schedule of any Inquiry set up under the *Inquiries Act 2005* or other specific Inquiry legislation. PRONI recommend that the suggested retention periods and final disposal actions are adopted by Inquiries as best practice, and incorporated into their Retention and Disposal Schedule. This is to ensure the preservation of a full public record of the work of the Inquiry, and to

ensure that future generations can examine and assess the conclusions reached by the Inquiry in a properly informed manner:

- Inquiry report (final published version) – Permanent retention (transfer to PRONI)
- Inquiry report (initial draft report and subsequent drafts in which changes were made) - Retain seven years after the final report, followed by secure destruction
- The entire contents of the inquiry website – Permanent retention (transfer to PRONI)
- Audio records (not transcribed in full) of interviews of potential witnesses (both redacted and un-redacted) – Permanent retention (transfer to PRONI)
- Transcripts of interviews of potential witnesses (both redacted and un-redacted) – Permanent retention (transfer to PRONI)
- Court transcripts of evidence which were relevant to the terms of reference (both redacted and un-redacted) – Permanent retention (transfer to PRONI)
- All minutes of the inquiry panel or meetings held during the course of the inquiry by the panel. Both redacted and un-redacted – Permanent retention (transfer to PRONI)
- Correspondence (format blind), redacted and un-redacted, between the inquiry team, witnesses and members of the general public, relatives or other government bodies – Permanent retention (transfer to PRONI)
- Legal opinion and related correspondence – Permanent retention (transfer to PRONI)
- Witness preparation files – Permanent retention (transfer to PRONI)

- Witness statements and expert reports, whether or not they were signed. Both redacted and un-redacted – Permanent retention (transfer to PRONI)
- Restriction notices and rulings on such notices which were made public and given under section 21 of the Inquiry Act 2005 – Permanent retention (transfer to PRONI)
- Evidence of steps taken to secure the attendance of witnesses - Retain seven years after the final report, by sponsor department
- All written submissions and transcripts of oral submissions, unless a restrictions notice applies – Permanent retention (transfer to PRONI)
- Indices of documents copied and provided to the panel during the course of the hearing – Permanent retention (transfer to PRONI)
- All documents provided to the inquiry which were relevant to the terms of reference (evidence used by the inquiry) from the general public and relatives and government bodies (format blind) redacted and un-redacted – Permanent retention (transfer to PRONI)
- Establishment documentation including: terms of reference, protocols created by the inquiry to regulate its conduct, policies concerning the conduct of the inquiry, advice given by counsel to the inquiry in relation to its conduct, certificates of full disclosure by those who provided documents to the inquiry, work plans, internal procedures, criteria used for deciding relevant and irrelevant material presented to the inquiry from all sources, overall costing, copyright and licensing, notebooks of inquiry team (format blind) – Permanent retention (transfer to PRONI)
- Counsel's reports and notes – Permanent retention (transfer to PRONI)
- Litigation records – Permanent retention (transfer to PRONI)

- Schedules of witnesses – Retain 7 years after the final report by sponsor department
- Research gathered by the inquiry team – Retain 7 years after the final report by sponsor department
- Financial records – Retain 7 years after the final report by sponsor department
- Solicitor's records (fees, etc.) – Retain 7 years after the final report by sponsor department
- Parliamentary questions – Retain 7 years after the final report by sponsor department
- Freedom of Information requests and responses

6) Selection of records at the end of the Inquiry

- 6.1)** Once the Inquiry's work is complete, Inquiry staff must assess all records to confirm that the records are no longer required for business use. All records created during the course of the Inquiry's work must be closed and identified as being 'inactive.' They must not be altered, added to or otherwise tampered with. It is good practice to conduct this appraisal as records are created or received by the Inquiry.
- 6.2)** Inquiry staff should bear the following factors in mind when assessing the value of their own records once the work of the Inquiry is concluded:
- Is the information required for current or future business need?
 - Does the information offer evidence of legal compliance or accountability?
 - Is the information available elsewhere (duplicate / published)?
 - Is the information a proof of precedent or authorisation?
 - Is the information 'low level' (such as records of day to day administration, office furniture procurement, travel arrangements, etc.)?
- 6.3)** PRONI will accept all records which have the final action of 'Permanent Preservation / Transfer to PRONI.' These categories of records comprise those of great significance, such as transcript evidence, minutes of meetings, legal opinions, witness statements, as well as primary data such as medical notes and records.
- 6.4)** The Inquiry must ensure that the copyright status of records, post-Inquiry, will not prevent the archiving or publication of material by PRONI
- 6.5)** Any records previously identified for transfer to PRONI must have been closed and sensitivity reviewed.

- All digital records created should already have become subject to disposal action (destroy or transfer) as per the EDRMS
- All paper records will now be brought forward and become subject to disposal actions as discussed at **(5)**

6.6) PRONI will examine all records which have the final action of 'PRONI Appraisal' in order to assess the record's potential enduring value. Some records will be selected for Permanent Preservation and be transferred to PRONI, whereas some records will be rejected and must be destroyed.

6.7) With regard to digital records, retention and disposal actions should be determined at the date of record creation according to the Inquiry's disposal schedule – see sections 5 & 7.3 for further information:

- Title – clear and logical description of the record and information held therein
- Metadata – record of selection decisions, creator, date of creation, and other important audit information
- Search function – permits ease of access to the record
- Export function – permits ease of transfer, with associated metadata
- Ability to create and implement a Retention and Disposal Schedule

6.8) Any records with 'destroy' as their final action, or which PRONI have rejected at appraisal should be destroyed using an approved secure method (such as cross shredding of paper records, or deletion of digital records).

6.9) The Inquiry must establish a robust, secure mechanism for the destruction of agreed material (including electronic backups). A record

of what has been destroyed should be given to the sponsoring department

- 6.10)** If records are not in good condition at the time of their transfer to PRONI, their long-term preservation will be jeopardised.

7) Sensitivity Review

7.1) All records identified for transfer to PRONI (whether automatically selected via the Retention and Disposal Schedule, or selected by PRONI following appraisal), must be sensitivity reviewed by Inquiry staff. Resources must be allocated to the sensitivity review to allow Inquiry staff, who will have built up the specialist knowledge of the workings of the Inquiry, to carry out and complete the review before the record transfers to PRONI. PRONI will not be able to accept the record of the Inquiry without a completed sensitivity review. Paper and Digital records will have quite differing methods of sensitivity review.

7.2) Paper records. Sensitivity review must occur before the actual transfer to PRONI, and Inquiry staff should complete an access recommendation form for each record type (i.e. file, register, notebook, photograph album, etc.).

- Inquiry Review is conducted at end of the record's 'lifespan', when the Inquiry has no further business need for the information, and when any Retention Period from the Retention and Disposal Schedule is expended (for example, financial records are kept for 7 years after they are closed).
- Inquiry Reviewers assess the entire record for any personal data or special category of personal data which would potentially be protected under GDPR and the Data Protection Act 2018 (DPA), or exempt from disclosure under the Freedom of Information Act 2000 (FOIA), or the Environmental Information Regulations 2004 (EIRs). Every item of data and every document must be examined in this process.
- FOIA Exemptions or EIRs Exceptions must be applied by Inquiry Reviewers to any relevant sensitive information, and where required an explanation on the application of the public interest test and harm tests in relation to each item of data should be provided [relevant FOIA Exemptions for a Public Inquiry can

include section 38 of FOIA *Health and Safety* (information whose release would potentially endanger the physical or mental health of individuals), section 40 of FOIA *Personal Information* (information whose disclosure would breach the Data Protection Principles), section 41 of FOIA *Information provided in Confidence* (information whose disclosure would constitute an actionable breach of confidentiality) and section 42 of FOIA *Legal and professional privilege*. Regulation 12(5)(d) of EIRs *Confidentiality of Proceedings*

- Inquiry Reviewers must identify any *potentially exempt* information, and mark this information with tabs.
- Inquiry Reviewers must not redact any *information or otherwise alter, mark or highlight* the record. Redaction where appropriate is undertaken by PRONI staff, following transfer.
- Inquiry Reviewers should complete the PR14 form, noting page numbers (or flagged pages) where potentially exempt information occurs. They should complete any qualifying comments, tick boxes for relevant FOIA Exemptions or EIRs Exceptions, and sign the PR14 form.
- Inquiry Reviewers then pass the completed PR14 forms for quality assurance by a nominated senior Inquiry Reviewer (or Information Manager), to counter sign.
- PRONI are consulted on all recommended closures, and once agreed the records can be transferred for permanent preservation.

7.3) The correct form to be used will depend upon the date at which records are transferred to PRONI.

- *PR14*. This form should be used for any records which are to be transferred to PRONI at less than 20 years. This is calculated from the point at which the record was closed (or when the work of the Inquiry was concluded).

- *PR14-H* (Historical). This form should be used for 'historical records' as defined within Part VI of FOIA, and covers any records which are to be transferred to PRONI at age 20 or older. This timespan is calculated from the point at which the record was closed (or when the work of the Inquiry was concluded).

7.4) Digital records. Inquiry (or sponsor department) should contact PRONI regarding arrangements for sensitivity review for digital records.

- The EDRMS must have the functionality to introduce automatic disposal protocols once a record has reached the end of its required Retention Period
- The system should possess adequate and accurate metadata, complying to minimum metadata requirements, recording the access decisions, with meaningful titles, covering dates and where relevant a description of any closed (sensitive information) and applicable FOIA Exemptions
- The system should have search facility to enable staff to quickly locate a record
- The system's functionality should support export of records, and in particular when exporting to their final destination (PRONI's *Digital Repository*)
- Records with certain classifications (i.e. above Official) cannot be transferred to PRONI, and these records must be de-classified before any export. If necessary the Inquiry / Sponsor department must hold any 'above-restricted' level records, and the associated metadata
- The financial and resource costs of attempting a sensitivity review on records retrospectively is such that an inquiry will be required to carefully consider undertaking this review as the records are created or received. This is particularly important when bearing in mind the problems faced post-Inquiry, when the

Inquiry staff may have inevitably dispersed, and when the sponsor Department has to carry out sensitivity review.

- 7.5)** Inquiry Reviewers must assess digital records for any personal data or special category of personal data which would potentially be protected under GDPR and the Data Protection Act 2018 (DPA), or exempt from disclosure under the Freedom of Information Act 2000 (FOIA), or the Environmental Information Regulations 2004 (EIRs).
- 7.6)** FOIA Exemptions or EIRs Exceptions must be applied by Inquiry Reviewers to any relevant sensitive information, and where required an explanation on the application of the public interest test and harm tests in relation to each item of data should be provided [relevant FOIA Exemptions for a Public Inquiry can include section 38 of FOIA *Health and Safety* (information whose release would potentially endanger the physical or mental health of individuals), section 40 of FOIA *Personal Information* (information whose disclosure would breach the Data Protection Principles), section 41 of FOIA *Information provided in Confidence* (information whose disclosure would constitute an actionable breach of confidentiality) and section 42 of FOIA *Legal and professional privilege*. Regulation 12(5)(d) of EIRs *Confidentiality of Proceedings*
- 7.7)** The Inquiry should note that where an FOIA Exemption applies to 'sensitive' information, PRONI will not disclose this information without first consulting the Inquiry's sponsor department.
- 7.8)** Final sensitivity review will be assisted by an assessment of any sensitive information at the time of creation or receipt of the record. The record should then be stored in a suitably secure area of the file registry.
- 7.9)** Sufficient time should be left to conduct a thorough sensitivity review of all relevant Inquiry records. This is particularly relevant when considering the anticipated large volume of digital records in a Public Inquiry.

8) Transfer and receipt

8.1) At the conclusion of the Inquiry, all records must be closed and checked by Inquiry staff. Thereafter,

- all records selected by PRONI should have been sensitivity reviewed under the terms of FOIA and prepared for transfer to PRONI
- all paper records which were rejected by PRONI and were identified on the disposal schedule as having the final action of 'destroy' should be securely shredded
- all paper records which were rejected by PRONI but which are identified for transfer to another organisation (such as sponsor department) should be prepared for transfer
- all digital records identified on the disposal schedule as having the final action of 'destroy' should be automatically deleted by the EDRMS
- all digital records which are identified as permanent preservation, should be automatically transferred to PRONI's digital repository by the EDRMS

8.2) Paper records transferring to PRONI

8.2.1) Inquiry staff should arrange records according to their original order, and ensure that all records are included.

8.2.2) During the Inquiry, records should ideally have been kept in logical arrangement, and this order should be retained at transfer. It is this basic, unaltered arrangement which assists the archivist and then future researchers in examination of the records.

8.2.3) All boxes, files, envelopes, photographs, maps, videos, CD / DVD should be clearly labelled and where necessary sealed to prevent accidental loss, exposure, damage or destruction during transit.

8.2.4) No records should be removed, altered or otherwise tampered with. The only rare exceptions to this rule would be:

- where physical artefacts (such as models) need to be removed or passed to another organisation
- In rare circumstances, where particular records have been identified, it may be necessary (in agreement with PRONI) to remove papers to another organisation

8.2.5) Completed *PR14 H* access recommendation forms (as discussed at (7.2)) should accompany all records at transfer

8.2.6) PRONI should be contacted in writing to arrange transfer

8.3) Digital records transferring to PRONI.

8.3.1) As discussed, PRONI should be contacted regarding digital records which have been identified for permanent preservation and transfer

8.3.2) Digital records transferring to PRONI must be accompanied by access recommendations

8.3.3) The Inquiry EDRMS must facilitate the export of the record and its associated metadata

8.3.4) The Inquiry EDRMS must ensure that the file structure and metadata of the material can be exported to the sponsoring department or to PRONI

- 8.4)** Where a request for information under FOIA, DPA or EIRs is received by PRONI (previously withheld at the time of transfer), PRONI are obliged to first consult with the sponsor department (or the Inquiry Secretary, if possible)

9) Copyright

The Inquiry should ensure that correct procedures are followed when considering copyright and this should be completed at the earliest stage of the Inquiry.

- 9.1) The Chairman must ensure that copyright status of the Inquiry Report and other information created by the Inquiry has been assigned to the Controller of HMSO (on behalf of the Crown).
- 9.2) The Chairman must ensure that Inquiry staff are aware of copyright and that they have signed the appropriate copyright assignment documents. This would not apply to seconded civil servants or other crown servants.
- 9.3) The Chairman must ensure that they have established clear copyright and ownership of any digital information content maintained by the EDRMS (or other electronic software that the Inquiry has used). This would include applications for software licences, where care should be taken to ensure that any contractual agreements include the provision for transfer of licence, data migration (post Inquiry), and ownership of the information content
- 9.4) The Chairman must ensure that any re-use of information has been authorised (by licence), and in particular information which has been produced by organisations or individuals outside the Inquiry. The copyright licence should clearly identify the origin and creator of the information.
- 9.5) The Chairman must ensure that copyright extends to the website and any re-use of the information therein. Any outstanding issues regarding the archiving of the website should be satisfactorily resolved. However, it is envisaged that Inquiry website would automatically be covered by Crown copyright.

- 9.6)** In accordance with the Re-Use of Public Sector Information Regulations, it is essential that as few impediments as possible are placed in the path of researchers seeking to re-use Inquiry information. This would include the reporting, publishing, dissemination and permission to re-use Inquiry information. The Chairman should ensure that this issue is clear and understandable to the public, with regard to 'how' they may re-use the information (for example, media).
- 9.7)** The Chairman must ensure that those giving evidence at the Inquiry are fully aware of the copyright licence. Normally, the Inquiry will issue a statement inviting individuals and groups to submit evidence, and in this statement it should be emphasised that any evidence heard or submitted to the Inquiry would be subject to licensing terms permitting use (as required by the Inquiry).
- 9.8)** Furthermore, this statement should indicate that all such information will inevitably transfer to PRONI for permanent preservation, with information being presumed available to the public upon transfer, unless identified as sensitive (and as such withheld under one or more FOIA, DPA or EIR Exemptions).
- 9.9)** For any audio – visual content on the Inquiry website, or for televised hearings / proceedings of the Inquiry, one or more special licences should be procured for future use and access. This would extend to A-V material transferred to PRONI.

10) Appendices

Appendix A

PUBLIC INQUIRY Rules 2006 -

http://www.legislation.gov.uk/uksi/2006/1838/pdfs/uksi_20061838_en.pdf

Appendix B

PUBLIC INQUIRY Act 2005 -

http://www.legislation.gov.uk/ukpga/2005/12/pdfs/ukpga_20050012_en.pdf

Appendix C

PRA 23

<http://www.legislation.gov.uk/apni/1923/20>

Appendix D

DOD 25

<https://www.nidirect.gov.uk/sites/default/files/publications/1925-disposal-of-documents-order.pdf>

Appendix E

Data Protection Principles

The General Data Protection Regulations (GDPR) sets out 7 principles of Data Protection:

Article 5 of the General Data Protection Regulations (GDPR) sets out seven key principles which lie at the heart of the general data protection regime.

Article 5(1) requires that personal data shall be:

(a) processed lawfully, fairly and in a transparent manner in relation to individuals ('lawfulness, fairness and transparency');

(b) collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes; further

processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes shall not be considered to be incompatible with the initial purposes ('purpose limitation');

(c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ('data minimisation');

(d) accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay ('accuracy');

(e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods insofar as the personal data will be processed solely for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes subject to implementation of the appropriate technical and organisational measures required by the GDPR in order to safeguard the rights and freedoms of individuals ('storage limitation');

(f) processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures ('integrity and confidentiality').

Article 5(2) adds that:

"The controller shall be responsible for, and be able to demonstrate compliance with, paragraph 1 ('accountability').

11) References

1. International Organization for Standardization. (2001). 'ISO 15489-1: 2001 Information and documentation – Records management. Part 1: General', Geneva: ISO, section 3.15.

12) PRONI contact details

Public Record Office of Northern Ireland
2 Titanic Boulevard
Titanic Quarter
Belfast
BT3 9HQ

<http://www.nidirect.gov.uk/proni>

email: recordsmanagement@communities-ni.gov.uk

Telephone: (+44) 028 90 534800