

Extract from the Information Use: Code of Practice

Retention Policy

Ofsted's Retention and Disposal policy sets out Ofsted's practice in determining how long all information should normally be held. The disposal schedule also gives a detailed description of all types of information held by Ofsted, with timescales for disposing each category of information. The Policy and Disposal Schedule are attached as Annexes E and F respectively.

Staff must act to consider the disposal of information once these timescales have passed. Any plans to dispose of information must however be suspended, if it is found that the information is still required by Ofsted. For example for use in a complaint process, legal proceedings, in continued correspondence or for reference. Information Asset Owners are responsible for ensuring that all business process and desk instructions incorporate specific instructions for the disposal of information and the matters that should be considered before such action is taken.

Retention policies do not remove the need for responsible and proportionate record-keeping on all matters of importance and public interest. Exceptions must be used when such interest is known. Retention policies must not be activated retrospectively to justify the deletion of embarrassing records in particular cases.

ANNEX E: RETENTION AND DISPOSAL POLICY

1. Background

1.1 This policy should be read in conjunction with the *Information Use: Code of Practice* as a whole. This policy details the process which determines the length of time we retain information and the factors that help us to decide whether to dispose of it when that time expires. It applies to all original information in Ofsted, whether it is stored in electronic or paper format.

1.2 Retention and disposal policies are strongly encouraged in legislation. Section 46 of the Freedom of Information Act requires the production of a code of practice by the Lord Chancellor on the management of public records. This Code states that authorities, such as Ofsted:

*" (...) 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."*¹

1.3 Ofsted's overall position in relation to the information it stores reflects the general principles outlined in the Code. This is that "records should be kept for as long as they are needed by Ofsted: for reference or accountability purposes, to comply with regulatory requirements, or to protect legal and other rights and interests".

¹ <http://www.justice.gov.uk/guidance/docs/foi-section-46-code-of-practice.pdf> (section 12)

- 1.4 As important as having an outline policy statement in place, is that appropriate checks and safeguards exist to ensure that information is properly reviewed before it is disposed of, and that all actions in this area are sufficiently documented. This policy sets out how these should operate.

2. Retention Periods

- 2.1 Retention periods cover the length of time for which information must be held before it becomes acceptable to consider its disposal. Original information must not be disposed of or destroyed at any time before a retention period expires. Any destruction of original information prematurely before this time will be considered a potential breach of this policy.

Applying retention periods: original and copy information

- 2.2 Retention periods should only normally apply to 'original' information held by Ofsted. It is recognised however that at some times it may not be easy to establish whether information is 'original' or just one of a range of copies circulating within the organisation.
- 2.3 Information may also be utilised for more than one purpose at any one time. For example inspection evidence might be used simultaneously for: a school inspection report, a complaint about Ofsted, quality assurance and a Freedom of Information request. Each area may have different rules governing its retention.
- 2.4 The advice in all these circumstances is to adopt a cautious approach: do not assume that another person or team is retaining an original version of a document, unless you are certain they will do so for the appropriate period to meet all of its potential uses. If in doubt treat the version you have as the original.
- 2.5 Ofsted has introduced facilities to store the organisation's electronic information. These must always be utilised in preference to personal storage space. This will make management of information easier in future years, when retention periods expire.
- 2.6 You can be more confident that documents you have printed from an electronic source are 'copies'. Copied information is not subject to retention rules and can be destroyed once it has served the purpose it was created for. This will usually mean disposal of printed paper once it has been read.

The process of determining retention periods

- 2.7 There are a number of factors we consider when determining for how long different types of information should be kept before disposal can be considered. These are:
- Any statutory/regulatory requirements regarding retention

- Ofsted's generic business need
 - Wider historical/public interest issues.
- 2.8 Statutory and regulatory requirements, governing the length of time we hold information, are normally applied so that key decisions can be audited. Such requirements usually cover: financial material, HR changes to terms and conditions (for the purposes of determining pensions), contractual information, buildings records and Health & Safety logs.
- 2.9 Ofsted's core business of inspection evidence gathering is not covered by any statutory or regulatory provision relating to the length of retention. Any retention periods that Ofsted decides in this area should therefore be solely on the basis of our own business needs and wider statutory responsibilities. Business need is determined by our use, or intended use, of the information created and whether it will generate further external interest.
- 2.10 Some Ofsted information will be permanently preserved because it carries genuine longstanding interest to others outside of the organisation. In such circumstances we are under an obligation to ensure it is retained in the public interest. For Ofsted this applies to all published inspection reports and other reports made under legislative provisions. It also includes some internal management and policy papers. This information will at some point be transferred to the National Archives for preservation.
- 2.11 Decisions about what categories of information require permanent preservation should only be made by Ofsted's Departmental Records Officer (DRO) in consultation with the National Archives.

3. Disposal Schedules

- 3.1 Disposal schedules are designed to specify the retention period during which all 'original' information must be retained by Ofsted. The end of that period signals that it is now permissible to consider disposal of the information. However, staff must not assume that the expiry of a retention period represents an instruction to automatically destroy the information. It requires that we should determine whether or not it is now appropriate to dispose of the information (see section 4).
- 3.2 The design of the disposal schedule is intended to put categories of information together where there are logical groupings. This is in order to simplify the instructions and provide a more flexible basis for future decisions. This model contains broad, easily applicable categories. If there is any doubt about whether information falls within a category, please contact your Information Asset Owner in the first instance.
- 3.3 Additions can and will be made to the schedule if new types of information are created by Ofsted. These will normally be new statutory/regulatory requirements or information which clearly falls outside of the current

timescales documented. If there is any doubt about whether a new category is required or the timescale to be applied, please contact the DRO.

- 3.4 The disposal schedule and the retention periods contained within it should be determined through consultation between the relevant business areas and the Departmental Records Officer². Timescales can only be introduced or changed with the agreement of the relevant Director/s. In some circumstances, such as where changes to the retention periods impact across Ofsted's business, agreement of the Executive Board should be obtained.

4. What happens when a retention period expires?

- 4.1 When information has been held beyond the period specified in the disposal schedule, staff need to consider whether it is now appropriate to dispose of it. This process relies on the judgement of the staff member concerned and sometimes (for large volumes or sensitive files) it also requires the involvement of the relevant Information Asset Owner (IAO). There will be one of two outcomes to this review: either immediate disposal of the information or a further period of retention.

- 4.2 The relevant managers are required to satisfy themselves that the information concerned has no further use to Ofsted. This will include ensuring that none of the following applies:

- The information is known to be subject to current or possible litigation (appeals, court challenges, Judicial Reviews)
- The information is related to an ongoing complaint received by Ofsted, or is subject to other external correspondence/scrutiny (such as a 'lilac cover', Parliamentary Questions)
- The information is subject to a current/recent request for information
- There is any other activity/sensitivity that requires Ofsted to retain the information for reference or audit purpose, or the subject matter has become, or is reasonably likely to become of wider public interest.

Should any of the above apply it would be inappropriate to delete the information. The information in these circumstances must be retained for a further period, if not defined elsewhere in the disposal schedule, then determined by the manager, based on their analysis of the situation.

- 4.3 The ways in which this process is managed for different information types will vary. Each business area may need to develop specific business processes to ensure that these matters are properly considered before a decision is reached.

5. Documenting the Destruction of Records

² Ofsted's current DRO is Richard McGowan, Head of Information Rights

- 5.1 Details of the destruction of records must be kept to enable an audit trail to show when we have disposed of records and why. At the very least Ofsted is required to be able 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 Ofsted 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 FOI Act that records were destroyed in order to prevent their disclosure in response to a request for information. So for example where electronic files held in a shared folder are destroyed following a review a note should be made of the date of the review and a brief description of the files deleted.

- 5.2 If in any doubt staff should contact their Divisional Manager or the DRO for further advice.