Ministry of Justice

Secretary of State's Code of Practice (datasets) on the discharge of public authorities' functions under Part 1 of the Freedom of Information Act

Issued under Section 45 of the Freedom of Information Act

July 2013

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Foreword

a) This Code of Practice (datasets) fulfils the duty of the Secretary of State set out in section 45 (2) of the Freedom of Information Act 2000 ("the Act") to make provisions relating to the disclosure by public authorities of datasets held by them.

b) This Code of Practice does not replace, but supplements, the existing Section 45 Code of Practice on the Discharge of Public Authorities' Functions under Part I of the Act or any future revision of that Code of Practice.

c) This Code of Practice will take effect on 1 September 2013.

1. Section 102 of the Protection of Freedoms Act 2012 amended section 11 (Means by which communication to be made) and section 19 (Publication Schemes) of the Act and inserted new sections 11A and 11B. The practical effect of the amendments is that if an applicant requests information that is or forms part of a dataset, and expresses a preference to receive it in electronic form, the public authority is required to release the dataset in a way that enables it to be used and re-used. This means that the public authority must, firstly, provide the dataset in a re-usable format, where reasonably practicable; and, secondly, grant a licence (in accordance with one of the specified licences in this Code) under which its datasets may be re-used.

2. In addition, section 45 of the Act has been amended so that there will be a Code of Practice issued under that section to include provisions relating to disclosure of datasets.

Code of practice

This document provides guidance to public authorities as to the practice which it would be desirable for them to follow in connection with the discharge of their functions under section 11,11A, 11B and 19 of Part I of the Act in relation to datasets. It also specifies the licences in accordance with which datasets which are being released and which are relevant copyright works solely owned by a public authority should be made available for re-use.

The Secretary of State for Justice, having consulted with the Information Commissioner, issues this Code of Practice under section 45 of the Act on 17 July 2013.

The Code of Practice has been laid before Parliament on 17 July 2013 pursuant to section 45. It should be noted that the Code of Practice is consistent with the Re-use of Public Sector Information Regulations 2005 and the European Directive on the Re-use of Public Sector Information. It may need to be amended in view of the amending Directive (2013/37/EU), the negotiations on which have now been concluded.

The guidance in the Code covers the following areas:

i. Introduction
ii. Scope
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vii. Considering publication of datasets as part of a publication scheme
viii. Advice and assistance to persons making requests for information with requests for datasets
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i. Introduction

1. This Code of Practice provides guidance to public authorities as to the practice which it would, in the opinion of the Secretary of State for Justice, be desirable for them to follow in connection with the discharge of their functions in relation to datasets under section 11 (Means by which communication to be made), 11A (Release of datasets for re-use), 11B (Power to charge fees in relation to release of datasets for re-use) and section 19 (Publication Schemes) of Part I of the Act. It supplements the previously issued Code of Practice on the discharge of a public authority's function under Part I of the Act, which covers all information (not specifically datasets).

2. Words and expressions used in this Code have the same meaning as the same words and expressions used in the Act.

3. Neither the Act nor this Code require the creation of datasets for publication, nor do they require datasets to be updated if they would not otherwise be updated as part of the public authority's function. The Act and Code are intended to increase publication of updated datasets which are already accessible and to make them available for re-use and, where reasonably practicable, in a re-usable format.

4. Public authorities should handle a request for a dataset in a way that meets their obligations under the Act and in accordance with this Code of Practice. A public authority must disclose any information it holds that has been requested under the Act, including datasets, unless an exemption applies. The amended provisions in sections 11, 11A, 11B and 19 create additional rights for applicants and additional duties for public authorities in respect of datasets but they do not affect whether or not a dataset should be released under the Act. In deciding whether to release a dataset, a public authority should consider any exemptions which may apply and in particular, consider the exemption in section 40 of the Act relating to personal data and the Information Commissioner's Code of Practice on Anonymisation.

5. A dataset held in an incomplete, or draft, form that falls to be released under the Act is subject to the new provisions in the same way as a complete dataset. When releasing an incomplete dataset it is recommended good practice that public authorities provide contextual information explaining that the dataset is not complete and the likely consequences of this.

ii. Scope

6. This Code applies to datasets held by or on behalf of a public authority. The definition of dataset limits the application of the Code to datasets in electronic form that meet the criteria specified at section 11(5) of the Act.

7. The definition of dataset at section 11(5) is as follows:

> *(5) In this Act "dataset" means information comprising a collection of information held in electronic form where all or most of the information in the collection –*
>
> > *(a) has been obtained or recorded for the purpose of providing a public authority with information in connection with the provision of a service by the authority or the carrying out of any other function of the authority,*
> >
> > *(b) is factual information which -*
> >
> > > *(i) is not the product of analysis or interpretation other than calculation, and*
> > >
> > > *(ii) is not an official statistic (within the meaning given by section 6(1) of the Statistics and Registration Service Act 2007), and*
> >
> > *(c) remains presented in a way that (except for the purpose of forming part of the collection) has not been organised, adapted or otherwise materially altered since it was obtained or recorded.*

8. The first part of the definition (subsection (5)(a)) means that the datasets caught by the Act are those datasets which a public authority has originally obtained or recorded for the purposes of providing services or carrying out its functions, including decision-making.

9. The second part of the definition limits datasets for the purposes of the Act to factual information subject to the two criteria in subsection (5)(b). The intention behind the first criterion, "not the product of analysis or interpretation other than calculation" is to catch 'raw' or 'source' data. The definition makes clear that mere calculation of information within the dataset does not count as 'analysis' or 'interpretation'. Accordingly, the aggregation of data to form a high-level dataset (such as the creation of regional figures that were collected at district level, or the creation of annual figures from data that were collected weekly) would not by virtue of being aggregated take a dataset outside the definition.

10. The intention behind the second criterion, to exclude official statistics, is to ensure there is no potential overlap with official statistics (which may otherwise have been caught within the definition), which are subject to their own regime on disclosure and publication, including under the Statistics and Registration Service Act 2007.

11. The criterion in section 5(c), that the dataset "remains presented in a way that (except for the purpose of forming part of the collection) has not been organised, adapted or otherwise materially altered since it was obtained or recorded" again is intended to ensure only 'raw' or 'source' data is captured within the meaning. The key consideration here is whether the reorganisation or adaptation represents a 'material alteration' to the original presentation of the dataset. Minor, insignificant or

insubstantial changes to a dataset will not take it outside the definition. Decisions will have to be made on a case by case basis by assessing what has been done to the presentation of the data in the dataset.

12. The other key consideration in the definition is how much, if any, of the data in the dataset has been changed or altered. If 'all or most' of the data in the dataset meet the criteria set out in subsection 5, then the dataset will fall within the definition. It should thus not be possible for public authorities to get around the new provisions by making minor or insubstantial changes to the presentation of the dataset as a whole, or making any changes to a minority of the data within the dataset. Even where a dataset has been significantly changed from the original dataset, such that the new information held no longer meets the definition of a dataset, the original dataset would still be subject to the new provisions in the Act (provided of course it is still held by the authority and falls within the scope of the request for information). However, where work has been undertaken simply to improve the quality of a dataset the amended dataset would remain within scope of the definition. Datasets that have been anonymised, or otherwise had exempt information removed, are still included in this definition.

13. Where information requested meets the definition of a dataset, the authority will be under a duty to provide the dataset in a re-usable format (see below), where reasonably practicable. However, the separate duty, to make their dataset available for re-use, and the relevant provisions relating to licensing in this Code do not apply to all datasets. Separate arrangements are in place to make available spatial datasets which fall under the INSPIRE Regulations. The provisions that relate to licensing and the re-use of datasets apply only to datasets that are, or contain, a 'relevant copyright work'. The definition excludes datasets subject to Crown copyright and Parliamentary copyright (see section 11A (8) of the Act).

14. The Information Commissioner may issue further guidance on datasets that gives further explanations and context regarding terminology used within this code. Collections of data and other information which do not meet the definition of a dataset in section 11(5) of the Act remain subject to the Act as it applies to recorded information generally, except those provisions relating specifically to datasets as defined in that section.

iii. Disclosing datasets in an electronic form which is capable of re-use

15. When releasing any dataset under the Act public authorities must, as far as reasonably practicable, provide it in an electronic form which is capable of re-use, i.e. a re-usable format. A re-usable format is one that is machine readable, such as Comma-separated Value (CSV) format.

16. In deciding whether it would be practicable to provide the dataset in a re-usable format, the public authority can take account of all the relevant circumstances. These circumstances may include the time and the cost involved in converting the dataset from a proprietary to a re-usable format, and the resources available to the public authority. The Act does not prescribe any cost limit for determining what is reasonably practicable, but any costs which the public authority takes into account, for example the use of an external contractor, must be justifiable.

17. If the public authority concludes that, in all the circumstances of the case, it would not be reasonably practicable to provide the dataset in a re-usable format, then the authority must still provide the dataset in another format.

18. Datasets are, by their nature, often created in formats that are capable of re-use. Therefore, if a public authority publishes a dataset in a non-re-usable format such as an image file, it should consider also publishing the dataset in its re-usable format before its conversion to an image file, or keeping a re-usable version of the dataset available. Where datasets are only held in non-re-usable formats, the public authority is not obliged to convert the dataset before releasing it where it is not reasonably practicable to do so.

19. Public authorities should consider best practice and any guidance on the provisions of datasets issued by the Information Commissioner.

iv. Standards applicable to public authorities in connection with the disclosure of a dataset

20. When releasing datasets public authorities should as far as possible adhere to the Public Data Principles (http://www.data.gov.uk/library/public-data-principles). These principles are expected good practice for central government departments and recommended for the wider public sector. Authorities may wish to publish or signpost to these principles on their website.

21. It is recommended good practice that, so long as there are no good reasons for it not to be provided, that datasets will be accompanied by sufficient metadata and contextual information about how and why the dataset was compiled or created in order that users may fully comprehend the dataset they are dealing with.

22. When procuring new data processing systems, public authorities should reference the Government Principles for Open Standards in new government information technology specifications for software interoperability, data and document formats. The Principles are compulsory for central government departments, their agencies, non-departmental public bodies and any other bodies for which they are responsible.

v. Giving permission for datasets to be re-used

23. Public authorities should release datasets with accompanying details of licence conditions that apply to the re-use of the dataset or otherwise any limitation on re-use by virtue of third party intellectual property rights.

24. The public authority should ascertain whether copyright and/or database rights ('intellectual property') in the dataset are owned solely by the authority or whether there is a third party interest. Nothing in the Act overrides the rights of any third parties who may own intellectual property contained in the datasets. Upon receiving the FOI request consideration should be given to the extent to which such information is exempt from disclosure under sections 41 and 43(2) of the Act. If a public authority grants a licence to re-use a dataset or part of a dataset containing third party intellectual property without the owner's permission it may constitute an infringement of the third party's rights.

25. Where there is a third party interest under the terms of the Act any re-use licence must permit re-use only of those parts of the dataset that the public authority owns. However, if possible and subject to any confidentiality requirements, the public authority should identify who owns the remainder of the rights by the inclusion of an acknowledgment. In some cases the public authority may be able to obtain the third party's permission to grant the re-use of the third party intellectual property outside the Act; it is not a requirement under the Act. If in doubt it is advisable to seek legal advice.

Licensing

26. If the dataset that is being provided, or any part of it, is a relevant copyright work owned solely by the public authority, the public authority must make that work available for re-use in accordance with the terms of one of the licences specified in the following paragraphs. The starting point is that public authorities are encouraged to use the Open Government Licence for datasets which can be re-used without charge.

27. **UK Open Government Licence**: The Open Government Licence is the default licensing model for most Crown copyright information produced by the UK Government and supplied without charge. It is also widely used across the public sector. It is a non-transactional open licence which enables use and re-use with virtually no restrictions. It is applicable when use and re-use, including for commercial purposes, is at no cost to the user/re-user. Established as part of a wider UK Government Licensing Framework, the model encourages the use and re-use of a wide range of public sector information. The Open Government Licence can easily be used by public authorities, for example, it only requires public authorities to link to the Open Government Licence which is hosted on The National Archives website (http://www.nationalarchives.gov.uk/doc/open-government-licence).

28. **Non-Commercial Government Licence:** It is recognised that the Open Government Licence will not be appropriate in all cases, for example, in circumstances where information may only be used for non-commercial purposes. The Non-Commercial Government Licence was developed to cover that situation. As with the Open Government Licence, public authorities can link to the Non-Commercial Government Licence on The National Archives website.

29. **Charged Licence:** Where a public authority charges a fee for the re-use of a dataset, it must do so in accordance with the Charged Licence. The licence consists of standard licensing terms and, like the above licences, forms part of the UK Government Licensing Framework. It can be accessed on The National Archives website (http://www.nationalarchives.gov.uk/information-management/government-licensing/charged-licence.htm).

vi. Costs and fees

30. It is important to distinguish between the costs to the public authority of complying with section 1(1) for a request for a dataset, the cost of providing it in a re-usable format under section 11(1A), and the fees that can be charged to the applicant for making a dataset (where it is also a relevant copyright work) available for re-use under section 11A.

Cost of complying with the request

31. Fees Regulations for access made under sections 9, 12 and 13 of the Act apply to the right of access to datasets as to other information.

32. A request for a dataset should initially be treated in the same way as a request for any information under the Act. Under section 12(1) of the Act, a public authority is not obliged to comply with section 1(1) (i.e. inform the applicant whether it holds the dataset and, if so, to communicate the dataset) if it estimates that the cost of doing so would exceed the 'appropriate limit' as prescribed in the Fees Regulations. The Regulations set out the matters that can be taken into account when determining whether or not the costs limit has been reached and further detail as to how the costs limit should be applied. The fees the public authority can charge the requester for providing the information are set out in these Regulations.

Cost of providing the dataset in a reusable format

33. If the cost of complying with the request would not exceed the appropriate limit and the information is not otherwise exempt, the public authority must provide the dataset (subject to any right to charge a fee). If the requestor expresses a preference for the dataset in electronic form, the public authority must provide it in a reusable format, so far as reasonably practicable. As noted above a public authority may not charge for the cost of providing the dataset in a reusable format but can take into account the cost, time and resources involved in deciding whether it would be reasonably practicable to do so.

Fees for making a relevant copyright work available for re-use

34. A public authority that is the owner of a copyright work in a dataset being released has the power to charge a fee for re-use of that dataset.

35. Section 11B of the Act provides that the Secretary of State may make regulations about the fees for making relevant copyright works available for re-use. The regulations may prescribe cases in which fees may, or may not, be charged. The new Freedom of Information (Fees for Re-use of Datasets) Regulations 2013 provide that public authorities may charge a fee in accordance with those regulations, unless it already has another applicable statutory power to charge. If a public authority wishes to charge a fee and is already entitled to do so under any other applicable legislation for the re-use of the relevant copyright work, then it must do so on that other statutory basis instead of these regulations. However, it is important to note that where datasets are being released under the Act, the power to charge for re-use under the Re-use of Public Sector Information Regulations 2005

does not currently apply. Instead the public authority should first consider if it has any other statutory power which applies (and, if so, it should charge under that basis); if it does not have another statutory power, it should then consider charging under the regulations made under section 11B.

vii. Considering publication of datasets as part of a publication scheme

36. Public authorities should consider publishing existing and newly created datasets as part of their publication scheme, and subject them to the same tests that would apply when considering a request for release of the dataset. If the dataset would be released on request, the public authority should consider publishing it through the authority's publication scheme. The Information Commissioner produces guidance on publication schemes for public authorities (http://www.ico.gov.uk/for_organisations/freedom_of_information/guide/publication_scheme.aspx).

37. Public authorities should consider their long term plans and processes for the collection and storage of datasets, keeping in mind that they should be made easily accessible and in a re-usable format for requests or publication as part of their publication scheme as well as for normal business purposes. Maintaining inventories of datasets can contribute to better management of datasets as well as to compliance with the Act.

38. When publishing a dataset on their website, public authorities, should, where possible, publish it in a machine reachable format, so that the data can be directly downloaded from a given URL without further human intervention. For example, data should not be hidden behind a login, drop down menu or pick list.

39. Authorities whose websites are in scope for archiving by The National Archives should first check that the data has been captured and can be downloaded from the UK Government Web Archive before removing the data from their own websites. Following this practice will avoid relevant authorities' websites from becoming cluttered with out of date data, whilst still keeping such data available.

40. If a dataset has been requested from a public authority under the Act, then the authority must publish that dataset in accordance with its publication scheme unless the authority is satisfied that it would not be appropriate to publish it. It may not be appropriate to publish it if, for example, it is exempt from disclosure under one of the exemptions in the Act or it shows partial or potentially misleading information and the public authority is able to publish more comprehensive data that provides greater transparency. If the authority holds an updated version of the dataset it must also publish that updated version, unless it is satisfied that it is not appropriate to do so.

41. Furthermore, when the authority publishes the dataset under its publication scheme, it must (as for responding to a request) provide it in an electronic form that is capable of re-use, where it is reasonably practicable to do so. What is reasonably practicable will again depend on the circumstances in each case and include the same considerations when dealing with a request, e.g. the cost of doing so, the work involved in doing any conversion and whether any specialist equipment or software is required.

viii. Advice and assistance to persons making or intending to make requests for datasets

42. Public authorities are required to provide advice and assistance to people who have made, or who propose to make, requests for datasets just as they would for any other information. This is under section 16 of the Act (a public authority's duty to provide advice and assistance to applicants and potential applicants).

43. As with FOI requests for any information, applicants should provide a sufficient description of the dataset sought for the public authority to be able to identify and locate it. Public authorities should provide assistance to the applicant that will help him or her describe it more clearly.

ix. Complaints

44. The redress mechanisms of the Act apply for datasets just as for any other information; and the Information Commissioner's functions under Part IV apply in the same way. The Information Commissioner will have the jurisdiction to consider any complaints in respect of datasets, including any complaint in respect of the duty to make a dataset available for re-use and the licensing provisions. Complaints relating to the re-use of datasets outside the definition in section 11(5), or to datasets subject to Crown or Parliamentary copyright or those datasets falling within the jurisdiction of the Scottish Information Commissioner, should be addressed to the Office of Public Sector Information, which operates from within The National Archives.

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