

Model Records Management Plan – Consultation Response



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The Scottish Information Commissioner's response to the Scottish Government's consultation on the Model Records Management Plan, produced by the Keeper of the Records of Scotland, as required by the Public Records (Scotland) Act 2011



I welcome this opportunity to contribute our views to the Scottish Ministers on the Keeper of the Records of Scotland's proposals for a Model Records Management Plan (MRMP). My predecessor, Kevin Dunion, welcomed the introduction of the Public Records (Scotland) Act 2011 (PRSA) and I am pleased to now offer continued support to the implementation of this important legislation.

The Scottish Information Commissioner has a statutory duty to enforce and promote the Freedom of Information (Scotland) Act 2002 (FOISA). Section 43 of FOISA provides that the Commissioner is to promote good practice with a view in particular to promoting the observance by Scottish public authorities of FOISA and the codes of practice issued under sections 60 and 61 of that legislation.

As the Keeper's guidance on the MRMP explains, many (but not all) of the authorities scheduled under PRSA are also subject to FOISA. Section 61 of FOISA provides that "Scottish Ministers are to issue, and may from time to time revise, a code of practice providing guidance to Scottish public authorities as to the practice which it would, in the opinion of the Ministers, be desirable for the authorities to follow in connection with the keeping, management and destruction of the authorities' records". The "Section 61 Code", provides high level guidance on the strategic management of public records. The Commissioner may consider whether an authority's records management practice is compliant with the Section 61 Code. If she considers the practice deficient, she may, after consultation with the Keeper, issue a practice recommendation to the authority.

The Section 61 Code, however, provides only high level guidance to the authorities subject to FOISA. It focuses on the need for authorities to maintain a *records management policy* rather than a requirement to maintain a *records management plan*. The PRSA now introduces that requirement. The Keeper's MRMP provides the standard and the framework for authorities' records management plans. The MRMP includes the need for a records management policy. FOISA and the PRSA are separate primary legislation, but complementary. As the Section 61 Code explains, "Freedom of information legislation is only as good as the quality of the records and other information to which it provides access". Conversely, where records management practice is deficient, the problem may only come to light when an authority has difficulty in complying with a request for information. Good records management practice will therefore help authorities to meet their FOISA obligations and manage the risks associated with non-compliance, including section 65 offences.

The Keeper and the Commissioner maintain a Memorandum of Understanding which sets out their respective roles and responsibilities. It explains how they work together to promote best practice and the actions they will take, individually and jointly, in response to poor compliance by authorities with either the Section 61 Code or the PRSA.

We welcome the Keeper's draft MRMP. We are pleased to note both the scope of the MRMP and the wealth of advisory material contained in the guidance. Our comments contain some suggestions for additional references in the MRMP to the Section 61 Code which may support and clarify the relationship between that guidance and the statutory requirement to produce a records management plan. We also contribute some lessons from our experience of approving publication schemes for public authorities which the Keeper may find useful.

Rosemary Agnew
Scottish Information Commissioner
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Response to consultation questions

The Model Records Management Plan

1. What are your views on the model plan as a tool for showing named public authorities the type of information the Keeper of the Records of Scotland (The Keeper) would expect to see in their records management plan?

Very useful

The MRMP provides a useful tool for public authorities to meet the requirement to produce a records management plan. The associated guidance provides helpful links to support material.

2. Are there 'elements' of a robust public authority records management plan (RMP) that you think are missing from the model plan?

Yes

The MRMP mirrors much of the guidance about records management policy in the Section 61 Code. However, we think it would be helpful to include further reference to three elements contained in the Code:

We would welcome a statement to the effect that good records management practice is the responsibility of everyone who creates or maintains records in an authority. Authorities need to develop clearly defined instructions applying to all staff at all levels of the authority, to create, keep and manage records, as recommended by paragraph 1.4 of the Code.

Records should be maintained in systems that enable records to be stored and retrieved as necessary (section 4 of the Code).

The authority should publish its records management policy so that members of the public can see the basis on which it manages its records (paragraph 2.4 of the Code) (in our experience, the public are reassured by the existence of a good records management policy and may also better understand the reasons why certain information is no longer held by an authority).

3. Are there 'elements' of the model plan that you think are not suitable for inclusion in the RMP of a public authority?

No

The Guidance Document

4. What are your views on the Guidance document as a supporting document to the model plan?

Very helpful



In particular, the Guidance points authorities to existing guidance relevant to particular public sectors e.g., the NHS Code of Practice on Records Management and the SCARRS project run by the Scottish Council on Archives.

5. What are your views on the number and variety of links to other best practice guidance in the Guidance document?

Sufficient links

6. To what extent does the Guidance document emphasise and provide useful links to self assessment mechanisms to allow named authorities to measure their records management proficiency?

Adequately

7. What are your views on the number and variety of sample documents offered in the Guidance document?

Sufficient

The inclusion of sample documents produced by individual authorities is particularly helpful as it explains good practice at the operational level.

The Model Plan and the Guidance document

8. Should the documents suggest the types of evidence that a public authority will need to submit to support each element of their records management plan?

Yes

The experience of the Scottish Information Commissioner's approval of publication schemes under section 23 of FOISA suggests that authorities appreciate examples (in our case, of the information the Commissioner expects authorities to publish). Feedback on the experience of the implementation of the Commissioner's Model Publication Scheme 2011 suggests that a degree of prescription in our guidance has assisted the staff responsible for implementation and in some cases supported them to secure internal management approval.

9. Both documents have introductions written by the Keeper. Do the introductions clearly and adequately explain the purpose of the documents?

Yes

We would welcome a statement to the effect that good records management practice is the responsibility of everyone who creates or maintains records of a public authority.

10. To what extent do the Model Plan and Guidance documents help explain the RMP that scheduled authorities are required to produce?

Adequately



Our experience of publication schemes would suggest that it may be helpful for the Keeper to provide a template records management plan which smaller authorities could use as the basis for their own plans.

11. Is the style and language of the Model Plan and the Guidance document clear and helpful to users?

Yes