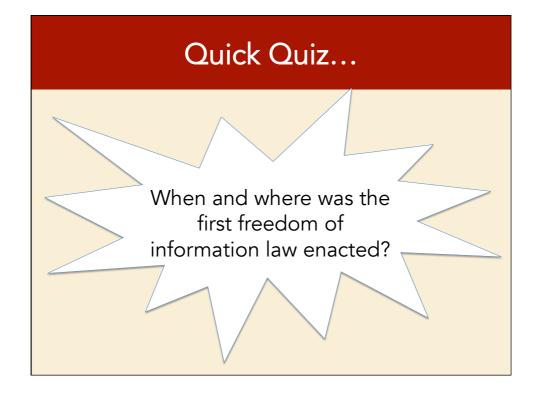
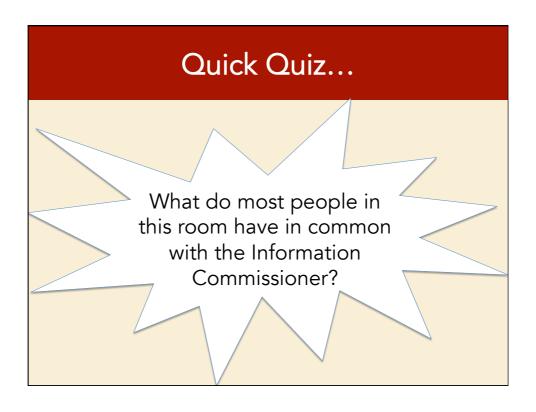


A Duty To Document?

Keeping Records To Meet Corporate Requirements





A Duty to Document?



"If public authorities are placed under an effective duty to document regime, then we are telling them to write down their decisions, to note their reasons and most importantly to write things down well."

Elizabeth Denham, FOI Event, 8 December 2016





"...my review has been severely inhibited by the failure to keep proper documented records of all discussions and decisions taken at these meetings. This is completely unacceptable when decisions around spending public money are being made."

Margaret Hodge MP, Garden Bridge Report, April 2017, para.38

Is there already a duty to document?

- Public Records Act 1958: only covers central government; only requires selection
- Public Records (Scotland) Act 2011: requires adoption of RM plan
- Specific regulatory requirements: eg
 Openness of LG Regs 2014 require written
 records to be kept of licence and contract
 awards that materially affect the council's
 financial position

What about FOI?

"FOIA is about the right of access to recorded information held by a public authority, and not about what information should be held, or about how a public authority holds that information and whether or not it implements a given records management system."

Johnson v IC (EA/2015/0167)

But...

"Freedom of information legislation is only as good as the quality of the records and other information to which it provides access. Access rights are of limited value if information cannot be found when requested or, when found, cannot be relied upon as authoritative."

S.46 Code of Practice on the management of records



"Authorities should ensure they keep the records they will need for business, regulatory, legal and accountability purposes."

How to decide what to keep

"Authorities should consider what records they are likely to need about their activities, and the risks of not having those records..."

Take into account:

 laws, regulations, standards 28 April 2017

- precedent
- protecting your rights, property, etc
- Justifying your actions

Establish business rules

"Having considered these factors, authorities should set business rules identifying:"

- What to record
- Who should do it
- When should it be done
- What should records contain
- Where should they be stored

Specific controls needed?

"...authorities should consider whether... records should be subject to particular controls so as to ensure their evidential value can be demonstrated..."

- authenticity
- reliability
- integrity
- usability

Authorities should also ensure:

- Staff are aware of their responsibilities and managers take responsibility for record keeping
- Staff know that they should choose file titles that reflect the nature of the records and facilitate retrieval
- Staff know that they can dispose of ephemeral material routinely



Practice Recommendations

"If it appears to the Commissioner that the practice of a public authority...does not conform with...the codes of practice...he may give the authority a recommendation specifying the steps which ought...to be taken..."

FOIA s.48



Accountability

"The controller shall be responsible for, and be able to demonstrate compliance with [the principles]..."

GDPR, Art.5(2)



Keeping records is a central requirement of GDPR – failure to do so can result in a very big fine

Keeping records

- The Information Commissioner has record keeping in her sights
- We already have a duty to document in many cases
- FOIA s.46 Code section 8 spells it out
- Keeping records is central to GDPR compliance...and avoiding big fines!

