

FoMan Training

A Duty To Document?

Keeping Records To Meet
Corporate Requirements

Quick Quiz...

When and where was the
first freedom of
information law enacted?

Quick Quiz...

What do most people in
this room have in common
with the Information
Commissioner?

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*

The Garden Bridge



"...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

Quick Quiz...

Which UK Government Minister is responsible for the s.46 Code of Practice?

Keeping records to meet corporate requirements

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

s.46 Code, section 8

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
- 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

Miscellaneous

Pieces of Paper

Other Galaxies

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

The New GDPR Principles (Art. 5)

Data
Protection
Principles



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!

Thank You!



Foiman

Making
information
rights
simple

Freedom of Information
Data Protection & GDPR
Records Management

www.foiman.com 

@foimanuk 

paul@foiman.com 

07799 654509 

Get in touch for training & consultancy

All content © 2017 Paul Gibbons (unless otherwise specified)

FOIMan Training

A cost-effective way to train your employees in information rights, delivered by a recognised expert. Courses and briefings in: data protection and privacy • freedom of information • environmental information • local government transparency • social media and the law • records management





FOIMan Services

FOIMan can help you:

- get your procedures right • audit compliance • survey information assets • draft policies, procedures & reports • develop filing plans and retention schedules • and more...

FOIMan Resources

Free resources to help information rights practitioners and users. Includes:

- FOIMan News! • The Exemption Index • FOI in Court • ICO & Tribunal Decisions • and more...

FOIMan Blog



www.foiman.com • paul@foiman.com • 07799 654509