

## SETTING THE RECORD STRAIGHT: RECORD KEEPING FOR GOOD GOVERNANCE



This TASC Policy Brief highlights accountability gaps in Ireland's policy framework when it comes to the creation and maintenance of official records. It makes the case for a risk-based approach to reforms to combat the oral culture of decision making in government and ensure better governance and enhanced accountability in the public interest.

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## Contents

<b>Introduction .....</b>	<b>3</b>
Defeating oversight: ‘no minutes’ policy .....	3
Gaps in policy framework .....	4
<b>Part 1: Record keeping for good governance .....</b>	<b>4</b>
Records for accountability .....	4
Commercial value and the bottom line .....	4
National assets and heritage .....	5
<b>Part 2: Records laws and record keeping practices .....</b>	<b>5</b>
No legal duty to create records .....	5
Record keeping practices vary .....	6
Impediments to effective record keeping .....	6
<b>Part 3: Examples of good practice .....</b>	<b>7</b>
Public record laws and a legal duty to document.....	7
Guidance to legal obligations.....	8
Public service codes .....	9
Risk-based approach to record creation.....	9
<b>Part 4: Options for reform .....</b>	<b>10</b>
Legislative duty to document.....	10
Regulations and guidelines .....	11
Codes of conduct .....	11
<b>Part 5: Conclusion .....</b>	<b>12</b>
Phased approach to reforms .....	12
Fostering open government .....	13
Acknowledgements .....	13
Endnotes.....	13

## Introduction

Official records are the corporate memory of government. They allow government to keep track of what it has done and citizens to understand reasons for decisions made and actions taken or not taken. Records can be paper or digital, and include emails, briefings, memos, minutes of meetings, documents, databases and diaries.<sup>1</sup>

Effective record keeping helps public servants perform their duties efficiently and ethically, while also ensuring the creation and maintenance of the 'paper trails' or evidence necessary for accountability purposes.

Such sound practice is all the more necessary when officials are working in a constrained environment such as dealing with rapidly changing events, crisis situations or high-risk issues. Adequate documentation is also vital when there is a pressing public need for thorough scrutiny of past actions and decisions through audits, public inquiries or other investigations. It is in this very context that record keeping practices at government level in Ireland have repeatedly been found wanting.

**Defeating oversight: 'no minutes' policy**  
Successive inquiries by independent statutory bodies into significant matters of public interest have been hampered due to a lack of written records relating to policy discussions, advice and decisions at the highest levels of government.

The finding by a recent judge-led inquiry of a deliberate policy to *not* keep records of discussions at government meetings is a case in point. The inquiry, by Mr Justice Nial Fennelly, was charged with examining the sequence of events leading up to the retirement of the former Garda Commissioner in March 2014. These

included a critical four hour meeting at which the Taoiseach instructed the then Secretary General of the Department of Justice to deliver a message to the Garda Commissioner in his home the night before his retirement. The meeting was also attended by the Attorney General, the Minister for Justice and the Secretary General of the Government.

In an interim report published in September 2015, Mr Justice Fennelly said that there was "*not a single note or record of any kind of that meeting or of its result*".<sup>2</sup> From the evidence heard, the Commission concluded that: "*it is clear that it has been a matter of public policy, for many years, that minutes are no longer kept of discussions at Government meetings. An account of the proceedings at a meeting can be discovered, if at all, from a reading of the terms of any decision made.*"<sup>3</sup>

The judge said he wished to draw attention to this practice "*insofar as it inhibits the Commission in performing the task assigned to it by the Government of investigating and reporting on what occurred at an important meeting*".<sup>4</sup> The Commission said it could "*only register its astonishment at a system of administration which apparently quite deliberately adopts a practice of not keeping any record of a meeting where an important decision is made.*"<sup>5</sup>

The Commission's conclusions echo other independent reviews and tribunals of inquiry initiated by this and previous governments which have found systemic shortcomings in record keeping practices at government level. These include reports of independent reviews which found significant gaps in relation to the recording of policy advice given by senior

officials to Ministers in the Departments of Finance<sup>6</sup> and Health,<sup>7</sup> and inadequate recordkeeping of key meetings and decisions at the Department of Justice.<sup>8</sup>

The Oireachtas Banking Inquiry hearings in 2015 also revealed a lack of documentation and official minutes of meetings relating to the government's momentous decision at an incorporeal meeting in September 2008 to issue a blanket guarantee of all liabilities in the Irish banking system.<sup>9</sup>

In its final report, the Joint Committee of Inquiry into the Banking Crisis recommended that: *“Clear guidelines should be developed on best practice on the recording, minuting and documentation management of meetings in the civil service. Monitoring of compliance with best practice should be the responsibility of the Information Commissioner.”*<sup>10</sup>

### Gaps in policy framework

It is against this backdrop that this Policy Brief highlights significant gaps in Ireland's policy and regulatory framework when it comes to government recordkeeping. It makes the case for reforms to improve official recordkeeping as a means to ensuring better governance and enhanced accountability. It stresses the need to take a risk-based approach to record creation and management in terms of the potential harm to the public interest caused by current 'oral government' practices.

Part I of this brief outlines the importance of good record keeping for good governance, while Part 2 provides an overview of record keeping practices in Ireland. Part 3 explores policy and good practice in other jurisdictions. Part 4 outlines options for reform in Ireland, from the introduction of a statutory duty to create and maintain records to the

adoption of regulations, official guidance and codes of conduct. Part 5, the conclusion, sets out how reforms in this area could be introduced on a phased basis.

## Part 1: Record keeping for good governance

Good record keeping is an indispensable element of good governance. This section details how records help public bodies meet their accountability and legal obligations and ensure sound decision making particularly in relation to evidence-based policy formation and the use of public funds. It also highlights the intrinsic cultural value of governmental records for future policy makers, historians, and citizens alike.

### Records for accountability

Public sector codes of conduct carry the clear message that public servants are accountable for their actions and decisions.<sup>11</sup> Good record keeping is key to meeting these standards. It contributes to accountability by demonstrating that public decision making is fair and reasonable, that alternative policies and actions have been properly considered, and that relevant legal and financial risks have been managed. Good records also assist public bodies including government departments in responding quickly and accurately to requests for information from Ministers, government-appointed inquiries, legislators, the media and members of the public. When it comes to advice tendered to Ministers by civil servants, a written record establishes clear accountability for advice taken or not taken.

### Commercial value and the bottom line

Records have commercial or business value because they contain information which is an asset for government. There is

therefore a compelling business case for good record keeping so that information can be accessed when needed, and to help ensure that the right decisions are made at the right time. Because good record keeping supports improved decision making and productivity, it ultimately saves the government, and hence the public, money.

### National assets and heritage

Public records are valuable cultural assets and a key part of our national heritage. Good records management practices ensure that we have a historical record which is reliable and useful. For example, departmental records of permanent value held in the National Archives offer detailed insights into the historical evolution of the Irish state and the creation of our national identity.

## Part 2: Records laws and record keeping practices

The two main pieces of legislation that are relevant to the issue of record keeping are the National Archives Act 1986 and the Freedom of Information (FOI) Act 2014.<sup>12</sup>

While both these laws are concerned with official records, they serve quite different purposes.<sup>13</sup> Under the National Archives Act, records of enduring value of government departments and specified agencies must be transferred to the National Archives of Ireland when they are thirty years old for long-term preservation, public inspection, and historical analysis.<sup>14</sup>

The Director of the National Archives can issue advice on records management to public service organisations. The National Archives has no power to issue regulations for the management of official records; that power rests with the Minister for Public Expenditure and Reform, who has not issued any regulations to date.<sup>15</sup>

The primary focus of the FOI Act is to create a legal right of public access to official information. This means that if a public authority creates a record, it has a responsibility to release it upon request, while protecting privacy, the financial interests of the State, and other conditions. FOI allows members of the public to access information contained in records held by a much broader range of public bodies than those covered by the National Archives Act for preservation purposes.

It is useful to view FOI as a subsidiary of the bigger picture of records management; once records are created and properly managed, then they may or may not be released under the access law. To look at this another way, without proper management of records, their creation becomes futile. This is because even if a record is created, it may not be listed for efficient retrieval and access if proper professional standards are not maintained. It is within this context that the Office of the Information Commissioner has stressed the importance of both record creation and maintenance as part of a proper records management regime for FOI purposes.<sup>16</sup>

The Data Protection Acts 1998 and 2003 overlap with both FOI and archival legislation. They provide safeguards for individuals' data and oblige public bodies to make proper provision for personal information security and access.

### No legal duty to create records

None of the laws outlined here oblige government departments or public bodies to make a record in the first place; it is assumed that they will do so. When this assumption turns out to be unfounded, the absence of a requirement to create records as a matter of course becomes problematic for a variety of reasons.

Firstly, it is abundantly clear that if records are not appropriately created, then the evidence-base required for efficient and accountable government will not be available. Furthermore, Freedom of Information legislation is only as good as the quality of the records to which it provides access: if records are not created and properly managed, the right of access is unenforceable in practice. Likewise, when no records exist of significant governmental decisions or meetings, the role and value of the National Archives as a historical repository is severely undermined.

### Record keeping practices vary

There is no public service-wide records management strategy or plan and accompanying guidelines. To a large degree, records management is a matter for individual public bodies and is governed by the requirements of each body's business, including its statutory functions and responsibilities.<sup>17</sup>

Public bodies and government departments tend to have their own internal record management guidelines, and institutional practices and standards vary. For example, some but not all government departments and public sector organisations have a dedicated records manager who is responsible for the development and implementation of a records management policy. These responsibilities generally fall to officials with no formal training as records managers or archivists.

The Director of the National Archives has repeatedly criticised the poor quality of records management in the Irish public service and called for Ministerial regulations in this area to facilitate its work of preserving records of enduring value.<sup>18</sup>

The Department of Public Expenditure and Reform has a central role in relation to policy and guidance on records management. It has in the past published several circulars as well as general advice and guidance on managing records.<sup>19</sup> In addition, the Minister for Public Expenditure and Reform has powers under both the FOI Act<sup>20</sup> and the National Archives Act<sup>21</sup> to make regulations, although these powers have never been used.

Finally, while the National Archives must give consent before department records of permanent value can be destroyed, there is no sanction for the destruction of records under the National Archives Act. Under the Freedom of Information Act 2014, it is an offence to destroy or materially alter a record without lawful excuse and with the intention to deceive, once an FOI request has been made for the record. Any person found guilty of such a summary offence can be fined up to €4,000.<sup>22</sup>

### Impediments to effective record keeping

Proper record keeping is usually seen as one of the defining characteristics of a modern public service. However, there are many factors in the public service environment which militate against the proper recording and storage of evidence and information in the form of paper or digital records.

There is no doubt that creating and maintaining official records is time consuming and may sometimes be regarded as burdensome, especially in an environment where there are time and resource constraints. The increasing ubiquity of digital information technologies also brings fresh challenges. Impediments to effective recordkeeping include:

- Developments in technology which have decentralised record making and recordkeeping. For instance, the computerisation of government offices led to the demise of the traditional typing ‘pool’, requiring officers to take on records management duties in addition to their core functions. While technologies such as server-hosted emails make it easier to automatically keep backups of records, they can also lead to records being managed separately and differently across an organisation;
- Developments in work practices (remote working, teleconferencing, etc.), enabled by mobile and cloud technologies, which have led to the creation of records across multiple and dispersed platforms or databases. Records management practitioners are struggling to develop systems and approaches to incorporating new record making technologies and formats into centralised systems;
- Reductions in resources and staff dedicated to documentation and information management;
- Increases in the pace of activity which means public servants find it increasingly difficult to set time aside to write up notes of meetings; and
- Inadequate training for individuals who are expected to be their own information managers.

In addition to these practical impediments, concerns have been expressed that one paradoxical impact of Ireland’s FOI law has been to exacerbate the practice of some public servants of staying “off the record” to avoid creating material that could run the risk of being released.<sup>23</sup> While the extent of this culture

of oral government is difficult to determine, a previous Information Commissioner has observed that it would be surprising if some public servants used to working in a culture influenced by the Official Secrets Act 1969 did not react in this way.<sup>24</sup>

### Part 3: Examples of good practice

This section examines how other jurisdictions, including New Zealand, Australia and the UK, work to ensure sound record creation and maintenance practices in the public service. It identifies two main approaches. These are: firstly, a statutory duty to create and maintain records; and, secondly, a principles-based approach that places record keeping within the scope of public service codes of conduct and guidance. In some jurisdictions, including Australia, both of these approaches exist side-by-side.

#### Public record laws and a legal duty to document

It is rare to find a legal requirement to create records in English-speaking jurisdictions; it is simply often assumed that this will be done. In countries where a legal duty to document exists, it is usually found in archival legislation. Here are examples of archival laws which include a duty to document:

- **New South Wales: State Records Act 1998** of the government of New South Wales, Australia.<sup>25</sup> Section 12 (1) states that “*each public office must make and keep full and accurate records of the activities of the office*”. The Act also requires government to ensure that their technology-dependent records remain accessible, only destroy records if State Records (the equivalent of our National Archives), says they can, and transfer

to State Records those records identified as state archives.

- **New Zealand: Public Records Act 2005.**<sup>26</sup> Section 17(1) states that "*Every public office and local authority must create and maintain full and accurate records of its affairs, in accordance with normal, prudent business practice, including the records of any matter that is contracted out to an independent contractor.*"

The Act also obliges every public office to maintain in an accessible form, so as to be able to be used for subsequent reference, all public records that are in its control, until their disposal is authorised by or under this Act or required by or under another Act.

- **Queensland: Public Records Act 2002** of the government of Queensland, Australia.<sup>27</sup> Section 7 (1) states that: "*A public authority must (a) make and keep full and accurate records of its activities; and (b) have regard to any relevant policy, standards and guidelines made by the archivist about the making and keeping of public records.*" The Chief Executive Officer of a public authority (the head civil servant in a government department or chief executive of a local authority) must ensure the public authority complies with these requirements.

A common requirement in these laws is for public offices and authorities to make and keep "full and accurate records" of their activities or affairs. **New Zealand's Public Records Act 2005** elaborates by including the requirement that records must be created and maintained "*in accordance with normal, prudent business practice*".<sup>28</sup>

This reference to business practice mirrors the language of the international standard

for records management, which classifies records according to business functions and activities which generate the record.

This Standard defines records as "*information created, received, and maintained as evidence and information by an organisation or person, in pursuance of legal obligations or in the transaction of business*".<sup>29</sup>

In this context, the 'business' of a government department or agency is the core functions set out in its legal mandate or mission statement as well as its standard support functions, such as human resources, finance etc.

### Guidance to legal obligations

The wording of the legislation identified here reflects the practical reality that primary legislation in relation to the creation of records cannot be too prescriptive. The level and standard of documentation considered necessary is always a matter of judgement as part of an organisation's legal mandate, risk control environment etc. It is common, therefore, for records management laws to be supplemented by detailed guidance documents. For example, in Queensland an Information Standard on Record keeping helps public authorities meet their obligations under the Public Records Act 2002 to make "full and accurate" records of their activities.<sup>30</sup> The Information Standard is managed and administered by Queensland State Archives. Similarly, under the Public Records (Scotland) Act 2011, the Keeper of the Records of Scotland publishes a model Records Management Plan (RMP) as well as guidance to public authorities on the form and content of their individual RMPs, which must be agreed with the Keeper.<sup>31</sup>

### Public service codes

A requirement to create and maintain proper records can be found in guidance and codes of conduct for civil servants which establish standards of ethical behaviour. Here are the relevant codes, and guidance to the codes, in Australia and the UK:

- **Australian Public Service Values, Code of Conduct and Guidance**

The Australian Public Service Values and accompanying Code of Conduct are part of the Australian Public Service Act 1999. The Code states that Australian public servants must behave with honesty and integrity,<sup>32</sup> while the Values state that the public service is “open and accountable” under the law and within the framework of ministerial responsibility.<sup>33</sup>

In its guide to the Values and Code of Conduct, the Australian Public Service Commission states that good recordkeeping is essential to accountability. *“All significant decisions or actions need to be documented to a standard that would withstand independent scrutiny. Proper record keeping allows others to understand the reasons why a decision was made or an action taken and can guide future decision makers.”*<sup>34</sup>

The guidance also states that the level and standard of documentation needs to match the circumstances. *“It would be expected that both the level and standard of documentation would increase as the consequences of decisions and actions increases. While it is not necessary to record every meeting, prepare file notes of every conversation or retain all emails, it is important to record and to maintain in an accessible form:*

- *significant decisions by Ministers, and the basis for them including advice on options and risks;*
- *programme decisions, including decisions affecting individuals or individual businesses that may be subject to administrative review, together with the basis for the decisions and the authority for making the decision;*
- *significant events, including meetings and discussions with Ministers or stakeholders or members of the public which may be significant in terms of policy or programme decision making.”*<sup>35</sup>

### Risk-based approach to record creation

By including “consequences of decisions and actions” as a key criterion for the level and standard of documentation required in any situation, the Australian Public Service guide sets out a risk-based approach to record keeping for accountability.<sup>36</sup>

This approach requires officials to anticipate the potentially harmful consequences of not creating records of significant events and decisions, including the basis for decisions. The types of consequences that could reasonably be covered by this guidance would include damage to the government, the public, the environment, public safety, the public finances etc.

Additional interpretation of the Values and Code provided by a high level government advisory body also stresses a risk-based approach to record creation and management. It advises public servants that they *“must create, keep and maintain a record of a particular decision, meeting, transaction or occurrence if:*

1. *the law requires it (i.e. a specific statutory provision requires)*<sup>37</sup>
2. *a lawful and reasonable direction given by someone who has authority to give such a direction requires it (e.g. if your supervisor directs you to prepare minutes of a meeting)*
3. *due care and diligence require it*
4. *the APS Values or the maintenance of the integrity and the good reputation of the APS require it.*"

In extreme cases, the document warns, a failure to keep good records may expose an employee to Code of Conduct, as well as civil or even criminal proceedings.<sup>38</sup>

- **UK Codes of Practice**

The UK Civil Service Code (2015) sets out at a broad level the standards of behaviour expected from civil servants, including in relation to records management.

It states that civil servants must "*keep accurate official records and handle information as openly as possible within the legal framework.*"<sup>39</sup> While there is nothing in the UK Code about the need to create records in the first place, the wording implies a duty to create.

In addition to the general Civil Service Code, a dedicated and detailed code of practice on records management has been produced under the UK's Freedom of Information Act 2000.

The Code states that authorities should have in place a records management policy which, as a minimum, should set out their "*commitment to create, keep and manage records which document its principal activities*".<sup>40</sup>

The Code also states that authorities should have organisational arrangements in place which include clearly defined instructions, applying to staff at all levels,

to create, keep and manage records. "*In larger organisations the responsibilities of managers, and in particular heads of business units, could be differentiated from the responsibilities of other staff by making it clear that managers are responsible for ensuring that adequate records are kept of the activities for which they are accountable.*"<sup>41</sup>

Significantly, this Code applies not only to public authorities that come under the FOI Act, but also to other bodies that are subject to UK and Northern Irish archival legislation.<sup>42</sup>

## Part 4: Options for reform

This section outlines potential areas for reform, ranging from the introduction of a statutory duty to create records to codes of conduct. These are not mutually exclusive options. As the Australian examples outlined in this paper show, public sector codes of ethical conduct which require the effective creation and management of records could augment and amplify any "duty to document" set out in primary legislation, thereby helping to change the culture and practice around record making, information and evidence.

### Legislative duty to document

A positive duty for public servants to create and maintain records of their business activities could be introduced in primary legislation. Such a statutory duty could be included in new legislation, or as amendments to the National Archives Act 1986. A new substantive piece of legislation in this area would provide law makers an opportunity to address deficiencies in the 1986 Act, which have been set out by the Director of the National Archives.<sup>43</sup>

In this context, it is interesting to note that Canada's Information Commissioners in January 2016 called on their respective

governments to create a legislated duty requiring all public entities to document matters related to their deliberations, actions and decisions.<sup>44</sup> The joint resolution followed an investigation by the Information Commissioner for the province of British Columbia into the expunging of email records by political staff in government offices.<sup>45</sup>

### Regulations and guidelines

The Minister for Public Expenditure and Reform has general responsibility for this area, with the power to issue regulations under the National Archives Act 1986,<sup>46</sup> for the proper management and preservation of Departmental records. Under the Freedom of Information Act 2014, the Minister also has powers to issue regulations to give full effect to the legislation.<sup>47</sup> If regulations were issued, a records management strategy and guidelines could follow, based on international standards and best practice.

There are already indications of government intention in this regard. A Code of Practice drawn up under the FOI Act 2014 states that the Department of Public Expenditure and Reform should “develop central guidance on records management on which public bodies can base detailed guidelines pertinent to their own organisational needs”. The Code also states that each public body should have an overall records management policy statement endorsed by its management board, providing “a mandate for the performance of all records/information management functions as well as setting out the body’s commitment to create/classify, manage, store, destroy and transfer records for archival purposes.”<sup>48</sup>

While this indication of policy intention is welcome, a key point of this policy brief is that records management reforms should

focus on the creation of records as evidence for accountability purposes, in addition to archival requirements.

### Codes of conduct

As the examples here show, public sector ethics codes are a natural repository for rules and guidance in relation to record creation and maintenance.

The Public Sector Standards Bill 2015, was making its way through the Oireachtas when a general election was called February 2016.<sup>49</sup> It establishes a set of integrity principles for all public officials. Under the bill, a new Public Sector Standards Commissioner must issue a Model Code of Conduct for the guidance of public officials in complying with the legislation by meeting standards of conduct and integrity.

It also empowers each public body to draw up and issue one, or more than one, code of conduct, in conformity with the Model Code.

In relation to standards of integrity, the bill states that: “*In performing his or her functions, it is the duty of every public official: (a) to maintain proper standards of integrity and concern for the public interest, and (b) to use resources efficiently and effectively.*”

The bill defines “concern for the public interest” to include concern for the need to adhere to the principles of accountability and transparency in government and public affairs.<sup>50</sup>

There is clearly scope to include guidance in relation to the creation and maintenance of records in a Model Code of Conduct issued under this legislation, if it is passed in its current form following the 2016 general election.

## Part 5: Conclusion

The cornerstone of transparent and accountable government is strong records management practice that documents decisions and actions of government departments and agencies, and the reasons for these.

The poor quality of records management in the Irish public service has been repeatedly highlighted in inquiries and reports of various authorities. The shortcomings identified in this policy brief relate to one particularly problematic area of records management at government department level: the initial point when official records should be created. It is clear that the failure to capture evidence as a matter of course is a systemic issue which reaches to the highest levels of government and is an ongoing threat to the public interest.

Certainly, a case must be made for allowing Ministers and senior civil servants in government departments to be able to discuss sensitive issues internally in confidence without an obsessive focus on note-taking of every conversation. However, such sensitivities can be observed whilst also providing for adherence to certain ground-rules to ensure accurate and reliable recording of decisions, transactions and actions, and the reasons for these. While reforms aimed at introducing transparency into government affairs can create further temptation towards a culture of oral government, this only further underlines the importance of a duty to document.

### Phased approach to reforms

Given the nature of the policy gaps identified in this policy brief, a phased approach to reforms is proposed as follows:

#### 1. Guidelines

A government commitment to put in place, at a minimum, civil service-wide guidelines in relation to record creation and management. These should require all relevant bodies to have in place a Records Management Plan, with clear lines of overall management responsibility for records creation and maintenance. Such guidelines could be issued pending the introduction of primary legislation.

#### 2. Legal duty to document

The introduction of a statutory “duty to document” similar to that found in public records legislation in New Zealand and Australian. The duty to create and maintain full and accurate records of activities should apply across the public sector, and not be limited only to those bodies that fall under the FOI Act and National Archives Act. Measures should be introduced to ensure that the duty to document is accompanied by appropriate oversight and enforcement. Legislation should also require the Department of Public Expenditure and Reform to issue a Model Records Management Plan as well as guidance to public bodies on the form and content of their individual Records Management Plans. These should be tailored to meet the specific legal and business needs of each organisation.

#### 3. Guidance under Ethics Codes

Detailed guidance in relation to proper record creation and management for accountability purposes to be included in guidance to Codes of Conduct introduced under any future reformed ethics legislation (such as the Public Sector Standards Bill 2015 which lapsed in February 2016 with the dissolution of Dáil Éireann). This guidance should be modelled on the risk-based approach in Australia, as outlined in Part 3.

#### 4. Presumption of negligence

Consideration should also be given to introducing a presumption that if records do not exist or cannot be found, that there was negligence or maladministration.

#### Fostering open government

The introduction of a legislative duty to create and maintain records would make Ireland a forerunner in this area in Europe, and among the members of the Open Government Partnership, a global coalition of 69 countries that Ireland joined in 2014.<sup>51</sup> Ireland's first two year National Action Plan expires in mid-2016 and fresh undertakings in a new plan would be a strong signal of continued support for the goals of the international partnership.

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#### Endnotes

<sup>1</sup> Records, as defined in international standards, are "information created, received, and maintained as evidence and information by an organisation or person, in pursuance of legal obligations or in the transaction of business." They may be in any medium, form, or format. BS ISO 15489-1:2001 Information and documentation – Records management – Part 1: General, 3.15.

[http://www.taoiseach.gov.ie/attached\\_files/Pdf%20files/30%20ISO.15489-1%20-%20IRISH%20VERSION.pdf](http://www.taoiseach.gov.ie/attached_files/Pdf%20files/30%20ISO.15489-1%20-%20IRISH%20VERSION.pdf)

<sup>2</sup> Fennelly, Nial Mr Justice, *Interim Report of the Fennelly Commission of Investigation (Certain Matters relative to*

The overall aim of reforms in this area should be to ensure that deliberations, activities, transactions and decisions of public bodies are adequately recorded and preserved for present and future purposes, including audits, inquiries and the historical record.

If the process for creating records in the first place is designed to support both accountability and access, then trust in government will inevitably be improved and time and money will be saved. If any reforms are to work, public service managers need to ensure that their agencies promote clear policies on recordkeeping, and that employees have a responsibility to understand and follow these in a consistent and accountable fashion.

*An Garda Síochána and other persons*) September 2015, p 265.

[http://www.merrionstreet.ie/en/ImageLibrary/Interim\\_Report\\_of\\_the\\_Fennelly\\_Commission.pdf](http://www.merrionstreet.ie/en/ImageLibrary/Interim_Report_of_the_Fennelly_Commission.pdf)

<sup>3</sup> Ibid, p 169.

<sup>4</sup> Ibid, p 170.

<sup>5</sup> Ibid, pp 194-195.

<sup>6</sup> *Strengthening the Capacity of the Department of Finance: Report of the Independent Review Panel*, December 2010.

<http://oldwww.finance.gov.ie/documents/publications/reports/2011/deptreview.pdf>

<sup>7</sup> Travers, John, *Interim Report on the Report on Certain Issues of Management and Administration in the Department of Health & Children associated with the Practice of Charges for Persons in Long-Stay Care in Health Board Institutions and Related Matters*, March 2005.

<http://www.oireachtas.ie/viewdoc.asp?DocID=3578>

<sup>8</sup> *Report of the Independent Review Group on the Department of Justice and Equality*, 11 July 2014.

<http://www.justice.ie/en/JELR/RptReviewGroupDeptJustice.pdf/Files/RptReviewGroupDeptJustice.pdf>

<sup>9</sup> The Committee of Inquiry into the Banking Crisis.

<https://inquiries.oireachtas.ie/banking/>

<sup>10</sup> Report of the Joint Committee of Inquiry into the Banking Crisis Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act, 2013, Volume 1: Report, page 12. <https://inquiries.oireachtas.ie/banking/wp-content/uploads/2016/01/02106-HOI-BE-Report-Volume1.pdf>

<sup>11</sup> Codes of conduct for civil servants and office holders: <http://www.sipo.gov.ie/en/Codes-of-Conduct/Office->

[Holders/Code-of-Conduct-for-Office-Holders-.pdf](#) and <http://hr.per.gov.ie/files/2011/06/Civil-Service-Code-of-Standards-and-Behaviour.pdf>

<sup>12</sup> The Freedom of Information Act 2014 repeals the 2003 and 1997 Acts.

<http://www.irishstatutebook.ie/eli/2014/act/30/enacted/en/html>

<sup>13</sup> The two laws contain different definitions of what constitutes a record, with the FOI Act (Section 2) focusing on formats and the National Archives Act (Section 2) requiring them to be made or received or held in the course of business.

<sup>14</sup> The current 30 year rule for the release of State papers is due to be reduced to 20 years on a phased basis.

[http://www.merrionstreet.ie/en/NewsRoom/Releases/Minister\\_Humphreys\\_announces\\_intention\\_to\\_introduce\\_20\\_year\\_rule\\_for\\_release\\_of\\_State\\_papers\\_on\\_phased\\_basis.html](http://www.merrionstreet.ie/en/NewsRoom/Releases/Minister_Humphreys_announces_intention_to_introduce_20_year_rule_for_release_of_State_papers_on_phased_basis.html)

<sup>15</sup> Section 19 (3) National Archives Act 1986.

<http://www.irishstatutebook.ie/eli/1986/act/11/enacted/en/html>

<sup>16</sup> Information Commissioner, *The Freedom of Information Act - Compliance by Public Bodies 2001*, p 23. <http://www.oic.gov.ie/en/publications/special-reports/investigations-compliance/compliance-by-public-bodies/>

<sup>17</sup> Ibid, p 23.

<sup>18</sup> See Director's Annual Reports 2007 to 2013.

<http://www.nationalarchives.ie/about-us/publications/annual-reports-of-the-director-of-the-national-archives/>

<sup>19</sup> Centre for Management Organisation Development manuals, *Records Management in a Nutshell* and <http://www.archives.ie/Records%20Management%20Training%20Manual%20Ireland.pdf> and *Old Rules are Still Good Rules – Records Management Guidelines*.

<sup>20</sup> Freedom of Information Act 2014, Section 3 (1).

<http://www.irishstatutebook.ie/eli/2014/act/30/enacted/en/html>

<sup>21</sup> National Archives Act 1986, Section 19 (1).

<http://www.irishstatutebook.ie/eli/1986/act/11/enacted/en/html>

<sup>22</sup> Freedom of Information Act 2014, Section 52. Fines Act 2010, Section 3.

<http://www.irishstatutebook.ie/eli/2010/act/8/enacted/en/pdf>

<sup>23</sup> *Strengthening the Capacity of the Department of Finance: Report of the Independent Review Panel*, December 2010, p 29.

<http://oldwww.finance.gov.ie/documents/publications/reports/2011/deptreview.pdf>

<sup>24</sup> Office of the Information Commissioner, *An investigation by the Information Commissioner into the practices and procedures adopted by public bodies generally for the purpose of compliance with the provisions of the Freedom of Information Act, 1997*, July 2001, p 24.

<http://www.oic.gov.ie/en/Publications/Special-Reports/Investigations-Compliance/Compliance-by-Public-Bodies/Compliance-by-Public-Bodies.pdf>

<sup>25</sup> [http://www.austlii.edu.au/cgi-bin/download.cgi/au/legis/nsw/consol\\_act/sra1998156](http://www.austlii.edu.au/cgi-bin/download.cgi/au/legis/nsw/consol_act/sra1998156)

<sup>26</sup><http://www.legislation.govt.nz/act/public/2005/0040/atest/DLM345529.html>

<sup>27</sup><https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/P/PublicRecA02.pdf>

<sup>28</sup> *A Guide to the Public Records Act* <http://archives.govt.nz/advice/continuum-resource-kit/continuum-publications-html/g8-guide-public-records-act>

<sup>29</sup>BS ISO 15489-1:2001 Information and documentation – Records management – Part 1: General, clause 3.15.

<sup>30</sup> Queensland Government Chief Information Office, *Information Standard 40: Recordkeeping*. <http://www.qgcio.qld.gov.au/products/electronic-document-and-records-management/548-qgea/products/qgea-documents/information/2357-recordkeeping-is40>

<sup>31</sup> See: <http://www.nrscotland.gov.uk/record-keeping/public-records-scotland-act-2011/resources>

<sup>32</sup> Australian Public Service Act 1999, Section 13, [https://www.comlaw.gov.au/Details/C2014C00511/Html/Text#\\_Toc394926945](https://www.comlaw.gov.au/Details/C2014C00511/Html/Text#_Toc394926945)

<sup>33</sup>Australian Public Service Act 1999, Section 10.

<sup>34</sup> *Public Service Values and Code of Conduct in practice: A guide to official conduct for APS employees and agency heads*, Section 1.2

<http://www.apsc.gov.au/publications-and-media/current-publications/aps-values-and-code-of-conduct-in-practice>

<sup>35</sup> Ibid, Section 1.3.

<sup>36</sup> For more on a risk based approach to records management, see Millar, Laura, Information and Records Consultant: <https://www.leg.bc.ca/documents-data/committees-transcripts/20151109am-FIPPARReview-Vancouver-n6>

<sup>37</sup> This advice highlights the fact that in some specific areas or sectors, there may already be a legal obligation to create records. For example, under Australian law written records must be kept in relation to occupational accidents and approval of proposals to spend public money.

<sup>38</sup> Management Advisory Committee, *Note for file: A report on recordkeeping in the Australian Public Service 2007*, pp 20-21.

[http://www.apsc.gov.au/\\_\\_data/assets/pdf\\_file/0014/51224/noteforfile.pdf](http://www.apsc.gov.au/__data/assets/pdf_file/0014/51224/noteforfile.pdf)

<sup>39</sup> Civil Service Code 2015

<https://www.gov.uk/government/publications/civil-service-code/the-civil-service-code>

<sup>40</sup> *Lord Chancellor's Code of Practice on the management of records issued under section 46 of the Freedom of Information Act 2000, Part 1, Section 7, p 11.*

<https://ico.org.uk/media/for-organisations/research-and-reports/1432475/foi-section-46-code-of-practice-1.pdf>

<sup>41</sup> Ibid.

<sup>42</sup> Ibid, p 22.

<sup>43</sup> *Report of the Director of the National Archives for 2013, page 2, par 1.8.*

<http://www.nationalarchives.ie/wp-content/uploads/2013/02/Report-of-the-Director-of-the-National-Archives-2013-V3.pdf>

<sup>44</sup> Statement of the Information and Privacy Commissioners of Canada on the Duty to Document.

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[http://www.oic-ci.gc.ca/eng/communique-de-presse-news-releases-2016\\_3.aspx](http://www.oic-ci.gc.ca/eng/communique-de-presse-news-releases-2016_3.aspx)

<sup>45</sup> Denham, Elizabeth, Information and Privacy Commissioner for BC, *Investigation Report F15-03 Access Denied: Record Retention and Disposal Practices of the Government of British Columbia*. October 22, 2015. <https://www.oipc.bc.ca/investigation-reports/1874>

<sup>46</sup> National Archives Act 1986, Section 19 (3). <http://www.irishstatutebook.ie/eli/1986/act/11/enacted/en/html>

<sup>47</sup> Freedom of Information Act 2014, Section 3.

<sup>48</sup> *FOI Code of Practice*, <http://foi.gov.ie/guidance/code-of-practice/>

<sup>49</sup> <http://www.oireachtas.ie/viewdoc.asp?DocID=30589>

<sup>50</sup> Public Sector Standards Bill 2015, Section 10.

<http://www.per.gov.ie/en/public-sector-standards-bill/>

<sup>51</sup> <http://www.opengovpartnership.org/country/ireland>