



*Local Services*

*Inspectorate Forum*

*Information Management Policy*

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# LSIF Information Management Policy

This protocol is deliberately intended to be a general framework to promote consistency of approach where this can be accommodated. It is not a prescriptive code of practice. It is understood that requests for information must be dealt with on a case by case basis.

## Key principles

1. The Local Services Inspectorate Forum (LSIF) partners recognise:
  - a) that they are each governed by different legislative frameworks and may have different statutory obligations in relation to information that they hold;
  - b) that, irrespective of those differing statutory frameworks, their responsibilities to respond to statutory requests for information under the Freedom of Information Act 2000 (“the FOIA”) and the Data Protection Act 1998 (“the DPA”) are the same and a common approach to public disclosure is highly desirable;
  - c) in particular, LSIF partners will share as much information with each other as possible, except in circumstances where this will prejudice their own statutory functions, or they are otherwise legally prohibited from doing so;
  - d) further, LSIF partners aim to be open, transparent and accountable;
  - e) in circumstances where one LSIF partner receives a request for information under the FOIA and is aware that other partner(s) or third parties have an interest in it and/or could be affected by its disclosure, the partner in receipt of the request will consult before disclosing that information;
  - f) the potential need to give the Information Commissioner’s Office, on request, access to any information required for the discharge of the Information Commissioner’s responsibilities under the FOIA and the DPA.

## Relationships with audited and inspected bodies – a consistent approach

2. The LSIF partners recognise that there are three key areas where it is beneficial to adopt a consistent approach in relation to the bodies that they inspect. These are outlined below.

## Explaining confidentiality to those we interview

3. The LSIF partners recognise that they are each subject to the FOIA and other legislation that may compel disclosure of certain information. They cannot guarantee confidentiality to those whom they interview in the course of an inspection. LSIF partners have agreed principles of confidentiality which is detailed in Appendix A. The substance of these principles will be emphasised in written form to the council and its partners during the preparatory stage, (for example, as part of the briefing pack), repeated at the set-up meeting and the council and its partners will be asked to brief all interviewees before the field work weeks start.

## **Explaining to inspected bodies how we will use their documents**

4. Information supplied by inspected bodies in the course of an inspection may be published or disclosed in accordance with the FOIA (Appendix B). Therefore, LSIF partners will:
  - a) inform inspected bodies at the time of making a request for information that documentation may be disclosed at a later date;
  - b) invite inspected bodies to highlight at the time of submission any information they are providing that they consider to be sensitive or confidential;
  - c) request that inspected bodies indicate why they consider information to be sensitive or confidential at the time of submission and take account of the explanation when considering requests for information;
  - d) ensure that inspected bodies are aware that partners cannot give an assurance that confidentiality will be maintained in all circumstances;
  - e) ensure that inspected bodies are aware of the need to make personal data and confidential information anonymous or obtain consent from individuals to disclose it;
  - f) advise inspected bodies of any intent to disclose information under FOIA or other legislation;
  - g) consider any representations made by the inspected body, but ensure that inspected bodies are aware that the final decision rests with the organisation that received the request.

## **Document retention and disposal**

5. LSIF partners recognise that some information gathered or created during the course of an inspection will need to be retained and that the required retention periods will vary for different types of information.
6. An inspection information schedule that defines the document management policy and the document retention periods and disposal arrangements will usually be prepared for each inspection type. The key types of document that inspectorates will typically retain are outlined in Appendix C.
7. Retention periods define the minimum length of time for which information should be kept before review. Information should be reviewed for destruction at the end of the specified retention period. If the information is no longer required then it will be destroyed.
8. If information is to be kept for longer than the agreed retention period, then the retention schedule will be reviewed and amended in accordance with paragraph 6.
9. Information that falls due for destruction will not be destroyed if it has been requested under the FOIA. Time will be allowed for an internal review and appeal to the Information Commissioner's Office.

10. If an FOI request is received information pertaining to the request should be retained in line with an inspectorate's own FOI retention periods.
11. Each inspectorate will be responsible for ensuring that its staff comply with the information schedule.
12. Where appropriate, for example a joint inspection, the inspection information schedule will be agreed by all partner inspectorates. In such cases, the partner inspectorates will also agree an approach to handling requests for information (under the FOIA or otherwise) that clearly defines responsibilities and points of contact for responding to requests and that facilitates fast retrieval of information.
13. The LSIF partner receiving an FOI request is responsible for processing it. If information is not held by a receiving partner but is known to be held by another partner then, in accordance with the Secretary of State for Constitutional Affairs' code of practice on the discharge of public authorities' functions under Part I of the Freedom of Information Act 2000<sup>1</sup>, LSIF partners will endeavour to transfer requests to the holding partner.

## **Freedom of information exemptions: criteria that will be applied in assessing harm or prejudice to our audit/inspection functions**

14. Inspection has been acknowledged as an effective catalyst for improvement in local services. There is, therefore, a strong public interest in ensuring that inspection functions are not undermined.
15. LSIF partners also recognise that there is a strong public interest in disclosing information about inspections to the public. This ensures that there is transparency in the way in which public authorities operate, and in particular in the effectiveness and efficiency with which they work. Therefore, partners are committed to being open, transparent and accountable, and agree to provide as much information as possible to those individuals who request it. Partners will not, therefore, seek to apply exemptions to information when doing so would be discretionary and no harm or prejudice would be incurred.
16. However, there may be occasions when the disclosure (or premature disclosure) of information could harm or prejudice an inspectorate's ability to fulfil its statutory functions to the detriment of the public interest. On such occasions, the likelihood and potential impact of 'harm' will be considered when determining whether or not to release information. In some cases the 'harm' will only apply to the release of information at the pre-publication stage of an inspection. Such 'harms' may be significantly reduced, or cease to exist post-publication. Consideration will, therefore, be given to the general position both before and after the publication of the inspection report.

<sup>1</sup> <http://www.dca.gov.uk/foi/reference/statCodesOfPractice.htm>

*This Agreement does not cover the sharing of information between inspectorates. For those inspectorates working in health and social care this should be done in accordance with the Information Sharing Protocol for bodies inspecting, regulating and auditing health or social care ([www.concordat.org.uk](http://www.concordat.org.uk))*

17. LSIF partners recognise that under the FOIA, the organisation receiving the request is responsible for providing a response. Partners do not seek to undermine this. LSIF partners also recognise that all requests for information must be considered on their own merit and unique circumstance. But, they also recognise the importance of consistency in the application of FOIA exemptions and the public interest test. This is particularly important in respect of joint inspections, as the inspectorate incurring harm or prejudice may not necessarily be the one processing the request for information. This is not (explicitly) recognised by the FOIA and so, in disclosing information, it is very important for LSIF partners to take into account harm or prejudice to other partners as well as themselves. Therefore, partners may choose to document the circumstances in which they consider that the release or premature release of information has the potential to prejudice the fulfilment of an inspectorate's statutory functions in the inspection information schedule.

## Appendix A

# Principles of confidentiality to explain before beginning an inspection

These principles will be emphasised in written form to the council and its partners during the preparatory stage (e.g. as part of the briefing pack), repeated at the set-up meeting and the council and its partners will be asked to brief all interviewees before the field work weeks start.

An inspection team may choose to develop a script, based on these principles, that is appropriate to the type of inspection in hand, but the substance of the principles must be conveyed.

- We will protect information given to us in interviews and will share it with others only if required to do so by law<sup>2</sup>, if we believe a person's health or safety may be in danger or in connection with a specific criminal investigation;
- We do not have to disclose information if doing so would be an actionable breach of confidence or would damage our ability to do our work in the future;
- If you want to tell us something that you would like us to keep confidential, please explain to us why the information needs to be kept confidential; and
- If we do share information we will only share the minimum amount necessary and we will always seek to withhold the names of interviewees<sup>3</sup>.

<sup>2</sup> for example, under the Freedom of Information (FOI) Act 2000 or other legislation, or in accordance with a court order

<sup>3</sup> on the grounds that such information is held in confidence (FOI Act s. 41) and disclosure would prejudice our ability to undertake such interviews in the future (FOI Act s. 33)

## **Appendix B**

# **Information to adapt for inclusion in document and information requests**

### **Freedom of Information Act 2000 and Data Protection Act 1998**

Information that you supply to us will be subject to the Freedom of Information Act (the FOIA) 2000 and the Data Protection Act (the DPA) 1998. Completed self-assessments and other documentation supplied to us may have to be disclosed if requests are received under the FOIA. Disclosures under the FOIA are for public consumption. As such, disclosures may also appear on partners' websites as part of a disclosure log. We will consult with you before disclosing any of the information.

- If you consider that any of the information you are providing is sensitive or confidential and possibly inappropriate for disclosure, please indicate this at the time of submission. You should not mark entire documents as sensitive or confidential because it is likely that only certain parts of the information could be withheld under the provisions of the FOIA. You should be aware that, even where you have indicated that information is sensitive or confidential, we may be required to disclose it under the FOIA if a request is received. The final decision will rest with the organisation that received the request.
- We would find it helpful if you could explain why you regard that information you have provided as sensitive or confidential. If we receive a request for disclosure of the information, we will take account of your explanation, but we cannot give an assurance that confidentiality will be maintained in all circumstances.
- We will make all reasonable attempts to consult with inspected bodies, should a request be received. However, we will need to allocate a short time period for consultation so that statutory timescales can be met. There will not be time for a lengthy discussion.
- No duty of confidence will be conferred by marking documents 'confidential' or equivalent.
- Inspected bodies will be expected to thoroughly assess information prior to providing it to LSIF partners. Should a statutory request for information be received, it will not be possible to ignore or return information provided in error. Please ensure that personal data and confidential personal information has been made anonymous or appropriate consent has been obtained before providing it to us.
- Personal data is usually disclosed to the data subject upon request.

## **Appendix C**

### **Key inspection documents that LSIF partners will typically retain**

(The duration of retention is to be determined for each inspection by the partner inspectorates and set out separately in an agreed schedule)

- The inspected body's self assessment and other documentation;
- Underlying records of evidence (RoE) or evidence notebook and the final composite documents;
- Draft inspection reports considered by review/moderation panels (and re-review/re-moderation panels) as part of inspectorate quality control and quality assurance processes;
- Records of issues (if any) that arose during the course of any internal quality assurance process, undertaken by the LSIF partner in the course of preparing the inspection report;
- The draft inspection report provided to the inspected body for comment;
- The inspected body's comments on the draft report;
- A record of the LSIF partner's response in relation to the inspected body's comments on the draft report;
- The revised draft report (if any) that is placed before the inspected body for the purpose of substantive round-table and feedback meetings;
- The formal minutes of meetings with the council;
- Correspondence relating to any mediation or clarification process prior to publication;
- The final draft version of the report and the covering letter from the LSIF partner explaining to the inspected body how its comments from the round-table meeting have been reflected in that draft;
- The pre-publication (if applicable) inspection reports.