



# FROM A CULTURE OF CAUTION TO A CULTURE OF CONFIDENCE: LESSONS LEARNED FROM IMPLEMENTING THE PUBLIC RECORDS (SCOTLAND) ACT 2011

Workshop Report

*A joint workshop funded by ADRC Scotland in partnership with National Records Scotland.*



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## Executive Summary

On 26 April 2016 colleagues from University of Edinburgh's School of Law and National Records Scotland ('NRS') held the workshop **'From a culture of caution to a culture of confidence: lessons learned from implementing the Public Records (Scotland) Act 2011'** at the Administrative Data Research Centre Scotland ('ADRC-S'). The workshop was based on the proposition that good records management and information governance is critical to the delivery of good public services. The workshop was intended to provide a forum for discussion between key stakeholders to consider the wider benefits of using public sector data and to connect the work of records managers to each public authority's commitment to the public and their service users. Participants included Scottish public authorities tasked with implementing the Public Records (Scotland) Act 2011 as well as other stakeholders involved and interested in the sharing and governance of public sector data.



*Image 1 Workshop Participants, 26 April 2016 ADRC Scotland Edinburgh*

The workshop discussions were structured around the following four themes:

1. **Planning records management and information governance**
2. **Reviewing records management and information governance**
3. **Data sharing**
4. **Destruction of records and data retention.**



Discussions revealed the nature of challenges currently faced by records managers in achieving good information governance. Participants considered the ways in which these challenges have been overcome highlighting key enablers of good information governance and best practices in records management.

**The key *challenges* in planning and reviewing records management and information governance plans were identified as:**

- Resource constraints;
- Silo-working and in particular the disconnect between records managers and the rest of a public authority;
- Maintaining a high-profile for records management and information governance within a public authority;
- The intangibility of 'success' in records management and information governance and thus the difficulty in measuring success;
- A lack of understanding of the broader aims and benefits of good information governance and records management by stakeholders within a public authority.

**The key *enablers* of best practices in records management and information governance were identified as:**

- The Public Records (Scotland) Act 2011 has acted as a positive force for records management, generating with staff an increased sense of value around records/data holdings;
- Sharing success stories within and between public authorities;
- Communicating to senior management and other staff the wider benefits of records management and information governance by reframing it as a critical component to achieving a public authority's broader objectives and commitment to the public.



The key *barriers* to the sharing of public sector data – whether within a public authority across departments, with other public authorities or with external bodies including for research – were identified as:

- Concerns with data quality - data not being ‘ready’ for sharing – and a lack of resources to make data of a shareable quality;
- Anxiety over potential individual or organisational liability if data are shared and subsequently reveal something perceived as negative regarding the public authority or if data are shared and subsequently misused – who will ‘own’ the decision (and bear the consequences) for sharing data?
- Protectionist cultures which focus on duties to safeguard data rather than the potential public interest in sharing or indeed the harms that could arise from *not* sharing data.

Key *enablers* of the sharing of public sector data were considered to include:

- Building trust amongst staff across a public authority but also between other public authorities;
- Ensuring data sharing practices are made transparent to the relevant publics;
- Increased staff training and awareness of both the risks and public interest benefits associated with the sharing of data;
- Identifying and communicating the public benefits of using public authority data.



**Finally, the key challenges arising from the Scottish Child Abuse Inquiry and more generally consideration of data retention and destruction were identified as:**

- The 'chilling' effect caused by the uncertain terms and scope of the Inquiry;
- Difficulty in determining when data should be kept on the basis that it may be of public interest in future whether for research, historical preservation or public inquiry purposes;
- The resource and capacity implications if more data are to be retained for future purposes.

**Whereas the key enablers of best practices in data retention and destruction were considered to include:**

- Preparing for mandated requests for data (such as the Inquiry) can provide public authorities with greater clarity about their data/records holdings;
- Information audits can facilitate more efficient responses to requests for data.

The following report provides a detailed summary of the questions raised during the workshop and highlights of the discussion that ensued.

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## FROM A CULTURE OF CAUTION TO A CULTURE OF CONFIDENCE: LESSONS LEARNED FROM IMPLEMENTING THE PUBLIC RECORDS (SCOTLAND) ACT 2011 – WORKSHOP REPORT

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THE UNIVERSITY of EDINBURGH  
Edinburgh Law School

Professor Graeme Laurie  
Leslie Stevens



Bruno Longmore  
Dr Hugh Hagan

### Workshop aims

On 26 April 2016 colleagues from University of Edinburgh's School of Law and National Records Scotland ('NRS') held the workshop **'From a culture of caution to a culture of confidence: lessons learned from implementing the Public Records (Scotland) Act 2011'** at the Administrative Data Research Centre Scotland ('ADRC-S'). The workshop was based on the proposition that good records management and information governance is critical to the delivery of good public services. Good records management and information governance can enhance transparency, guarantee citizens' rights and facilitate evidence-based policies for the wider public good. The capacity of public authorities to attain consistent levels in records management and information governance is being challenged by a prevailing culture of caution around the use of public sector data. The workshop was intended to provide a forum for discussion between key stakeholders to consider the wider benefits of using public sector data and to connect the work of records managers to each public authority's commitment to the public and their service users.



## Workshop idea

The workshop was developed from a chance encounter at the 'Data Safety in Scottish Health and Social Care Partnerships' in October 2015 on the basis of Leslie Stevens' presentation on 'Delivering Proportionate Governance in a Culture of Caution'. While Stevens' presentation was focussed on issues surrounding access to public sector data for academic research purposes, the underlying messages regarding the culture of caution struck a chord with the NRS experience of public records when developing the Public Records (Scotland) Act 2011 ('PRSA') legislation. A culture of caution could clearly be seen in the public records arena and Ministers wanted legislation to change a broader culture of poor records management practice in public authorities. There are lessons to be learned and wider conversations to be had drawing on the experience of authorities and others, including in the private sector.

## Workshop format and attendance

From the perspective of Scottish public authorities tasked with implementing the PRSA, workshop participants considered best practices and barriers to achieving successes in records management and information governance. In particular, participants discussed the ways in which public authorities could move beyond the current culture of caution surrounding public records to one of confidence.

Participants represented a range of public authorities with local, regional and national remit within Scotland. Other stakeholders in attendance included regulators and consultants experienced in working with public authorities on records management, as well as academic researchers and research co-ordinators with interests in data sharing for research purposes. The workshop was structured according to four sessions:

- 1. Planning records management and information governance**
- 2. Reviewing records management and information governance**





3. Data sharing
4. Destruction of records and data retention.

Within these four themes participants were asked to send questions they would like answered by the end of the workshop. These included:

**What is a meaningful metric for measuring success in moving from caution to confidence?**

**How can we use information governance legislation holistically as a tool to breakdown the cultural barriers that can prove an obstacle to cross-organisation and partnership working and collaboration?**

**How can I measure the success of our records management plan?**

**The work to create the PRSA Records Management Plan ('RMP') has raised the profile of Records Management ('RM') within my organisation – how can I ensure that RM becomes a key part of the corporate commitment to our service users?**

**Would NRS or Scottish Government ('SG') consider putting central resources into supporting smaller authorities meet their legal obligations and adopt best practice in records management by, for example, funding a project or team to develop a small to medium Electronic Records & Document Management System ('ERDMS') and offer it to smaller public authorities at minimal price and provide ongoing support for it? Culture and behaviour is one barrier aspect to the problem of implementation, capacity and funding is another.**

**How did you engage with internal stakeholders when developing the RMP, who had previously had little engagement with records management matters?**



**How have other authorities navigated the balance between stimulating the desire for change while not feeding into concerns about overload on teams?**

The workshop report will consider the extent to which the issues raised by these questions were resolved over the course of the workshop. We consider this in context with summaries of the key discussion points from each of the four sessions, extracting the barriers and facilitators of good records management and information governance as identified by the workshop participants. The report concludes with recommended actions for next steps and future plans for engagement.

### **Session 1: Planning records management and information governance**

Each session was divided into two breakout sessions where participants worked in small groups to discuss the questions provided by the workshop organisers (Laurie, Stevens, Longmore and Hagan). Session 1 was chaired by Meic Pearce Owen, Records and Information Manager Perth and Kinross Council, Chair UK Information and Records Management Society ('IRMS'). The topic of discussion was regarding best practices and barriers to planning for records management, notably, in preparing to submit records management plans to the Keeper of the Records of Scotland ('the Keeper') for the purposes of satisfying the PRSA. In breakout session 1 participants were asked to consider:

- **In reference to your own public authority, what about your approach to developing and implementing a records management plan would you consider to be a success?**
- **Is there anything about the approach taken that did not work? What are the barriers (if any) that you have experienced?**
- **"How did you engage with internal stakeholders when developing the Records Management Plan who had previously had little engagement with records management matters?"**



Senior management buy-in was considered critical to ensuring records management maintained a high profile and relevance for the public authority. In this regard the PRSA was considered a facilitator for attaining consistent levels of records management. Though, participants thought the required implementation of records management plans was only the first step to achieving consistent levels of records management and information governance: “We passed the driving test but are still learning how to drive the car.” The real work would be to affect a culture change around public sector data. As to cultures around data, participants identified a disconnect between records management and information governance on the one hand, and the broader objectives and operation of their public authorities. Whilst public authorities certainly see the value in their data, currently, they do not connect that value with the work of records managers and good information governance.

Silo working was identified as a key barrier to achieving culture change. It was made clear that from department to department there were disparate views and understandings of what public sector data encapsulated (i.e. ‘data sets’ versus ‘case files’ versus ‘records’) which translated into different records management and information governance practices across a public authority. Thus it is difficult to speak of a public authority’s ‘data’ in a singular or joined-up sense given the sub-cultures and resulting practices at work within each organisational unit – many public authorities do not have an overall picture of their data assets because of this. The constant strain on resources adds further complexity and difficulty to achieving cross-working across departments. Nevertheless, the process of developing a records management plan conferred clear benefits to public authorities in providing visible increases in the value of information amongst staff. The records management plan process provided a baseline from which public authorities could initiate broader discussions and thinking around records management and information governance.

In breakout session 2 participants were asked to consider:



- **What role has the law (e.g. PRSA 2011, Data Protection Act 1998, FOISA 2002) played in planning records management? Barrier/facilitator?**
- **What resources/expertise were needed to successfully plan and implement a records management plan, and possibly were not available at the time?**

Contrary to perceptions of the Data Protection Act 1998 ('DPA'), the PRSA was considered by participants to be a positive force and enabling factor for achieving good levels of records management and information governance. In particular, participants commented on the momentum generated by the PRSA and its positive impact on raising the profile of records managers within public authorities. Again, participants indicated a disconnect between the PRSA and wider objectives of the public authority. In this context, participants referred to the myriad of other 'data' legislation; public authorities do not currently recognise that in adopting, implementing and continually reviewing their records management plans, that they are also satisfying (or at least making it easier to satisfy) these other legal requirements. Nevertheless, a key enabling factor of implementing records management plans under the PRSA was the visible increase in the value of information amongst staff.

While the PRSA was seen as a facilitator, in contrast, the DPA is often used as a reason for not using or sharing public authorities' data. There are clear misconceptions and misinterpretations as to what is required by the DPA and this fuels the current culture of caution around public sector data. Many staff are concerned with the prospect of reputational damage, personal liability, or fines from the Information Commissioner's Office ('ICO'), if something were to go wrong with their data. While the possibility of fines focuses the minds of senior management it spurs risk-averse behaviours and thus reinforces the culture of caution. Moreover, resource and capacity constraints means that public authorities often lack the expertise to navigate the myriad of legal requirements as to their data and distinguish between 'real' versus 'perceived' barriers to data use and sharing. Again, it was considered



crucial to make more direct connections between implementing records management plans and satisfying other legal requirements such as under the DPA. Lack of resources (financial, time, expertise) and maintaining momentum were considered the key challenges for attaining consistent levels of records management moving forward from the initial development of a records management plan.

### Summary of Session 1

Overall, public authorities bought into the initial implementation of records management plans for the PRSA and were willing to engage with the broader ideas and aims of the legislation. The PRSA has acted as a positive force for records management, generating with staff an increased sense of value around records/data holdings. The key challenges for records managers continue to be resource-based and in maintaining a high profile within an authority. Currently, the role of records managers and archivists are viewed narrowly and as a group, they are largely disconnected from wider discussions, cultures and operations involving 'data'. Connecting the PRSA, records management plans and the activities of records managers with broader objectives of a public authority is critical to shifting current cultures.



## Session 2: Reviewing records management and information governance

Session 2 was chaired by Heather Jack, Managing Director, HJBS Ltd who is a consultant with experience in working with public authorities across Scotland on information governance and implementing the PRSA. In Session 2, the topic of discussion was reviewing records management plans and information governance practices after their initial development. In breakout session 1 participants were asked to consider:

- **After initial agreement and implementation of a records management plan, how do you think we can ensure that records management/information governance becomes a key part of your public authority's commitment to the public/service users?**
- **How has your public authority negotiated the balance between promoting change around records management and the realities of resources/capacity (shortages)?**

It was considered that the 'real work' of records management begins *after* the initial development and agreement of records management plans. The challenge is to keep momentum and records management high on the agenda. Whereas senior managers want easy 'wins' and 'tick-the-box' exercises, good records management and information governance requires constant reflection and assessment. A culture change is needed to connect records management and information governance to achieving the broader objectives of the public authority. Currently, cultures of silo working manifest in feelings of data ownership where some staff may perceive a public authority's data as property as opposed to being a public asset. It is critical to shift this mind-set and to encourage more outward focus on the public interest in [sharing?] public sector data and moreover, on records management as a means to delivering on public authorities' commitment to the wider



public/their service users. To this end, records management plans can be viewed as a public authority's 'information governance charter' and as such, as part of their commitment to the public.

To challenge current cultures around data, records management and information governance must become more embedded across departments; however, making records management a part of day-to-day operations remains a significant challenge. The constant strain on resources means that incremental changes over time are more realistic, where identification of key performance indicators ('KPIs') can help maintain profile and keep momentum. Despite the problematic nature and multiplicity of cultures, sub-cultures and practices around data, there is a need to understand and work with (not only against) organisational cultures across departments, if lasting progress is to be achieved.

In breakout session 2 participants considered:

- **What are the measures for success in records management as we begin to review?**

Participants agreed that successes in records management and information governance were difficult to quantify and largely 'silent'. It is far easier to recognise where improvement is needed. Interventions by the ICO and experiencing a data breach can be a crucial learning opportunity for public authorities. Nevertheless, identifying KPIs are crucial to maintaining momentum and raising the profile and wider benefits of records management. The cultural changes which records management and information governance seeks to achieve are particularly difficult to assess in terms of success. As iterated in the previous Session 1, connecting the work of records management with the ability to achieve broader public authority objectives (such as compliance with other legislation and engaging in new data initiatives) highlights the importance of good records management and information governance which in turn can facilitate incremental cultural changes around data.



Participants did identify discrete KPI factors they would consider as successes within their own public authorities. For example, it would be considered a success if they received positive feedback from front-line staff, that their work has been simplified and time has been saved as a result of standardised records management processes. Having a clearer understanding of a public authority's data assets was also considered to be a success factor. The ability to meet the requirements of legal obligations to disclose or retain data such as for the Scottish Child Abuse Inquiry was considered a potential success, as was fewer data breaches or even fewer Freedom of Information requests. Finally, as to achieving cultural change, participants considered success as when good records management simply became the way things were done across a public authority. The key is for records managers to work with their public authorities rather than doing something to their organisations.

## Summary of Session 2

It is important for key stakeholders across a public authority to understand the broader aims of records management and information governance as well its role in achieving wider organisational objectives. Given this broader role, successes are not always tangible and will take time to measure. Although it is easier to identify where records management has gone wrong, it is important to share success stories and to emphasise the wider benefits of records management by reframing it as a necessary component to achieving a public authority's broader objectives. Although records management and information governance are difficult to implement they are crucial to the overall working of a public authority and their commitment to the public and service users. As stated by a participant: "It's hard, but it's important."





### Session 3: Data sharing

Session 3 on 'data sharing' was chaired by Gerry Donnelly, Strategic Management Group ADRC Scotland and Data Resources, National Records of Scotland. Discussion covered data sharing in context with public authorities sharing data between different departments within their own organisation; with other public authorities; and with external third parties such as academic researchers. In breakout session 1 participants were asked to consider:

- **When is it appropriate to share public authorities' data?**
- **Equally, when is it appropriate to *not* share such data?**
- **In reference to your own public authority, why is data not shared? What reasons were given?**

There was clear sense of caution when the topic of data sharing was discussed with the workshop participants. As provided by the Session Chair, when people 'hear data sharing, they hear risk, and then they say "no"'. However, in spite of this general sense of caution, attitudes towards data sharing were revealed as extremely context-sensitive and driven by the particulars of any request for data, including whether it required identifiable personal data, individual-level but pseudonymised data, or anonymised and aggregate data. It seemed that the driving factor behind decisions to share or not share data were concerns over liability – who will 'own' the decision to share data and what is their responsibility (and the recipient's responsibility) once data is shared? Participants were concerned over what data would be used for once shared and how further use aligned with their commitment to the public and service users. If data use was considered contrary to their public mandate, the answer to any request for sharing data would clearly be 'no'.

The law was discussed as a prevalent reason for saying 'no' to data sharing. As this dialogue continued however, participants considered how legal reasons for saying 'no' are often



masking other concerns unrelated to the law, and in particular, their public authorities' lack of 'readiness' to engage in data sharing e.g. in relation to capacity, resources, data quality and so forth. Other barriers to data sharing outwith the law included the issue of trust which was cited as a common reason why staff may say 'no' to a request. This relates to apparent distrust within public authorities across departments, but also to mistrust of external parties requesting access to data. If a public authority's work focuses on particularly vulnerable segments of the public and/or working in an area perceived as sensitive, there was clearly stronger feelings of mistrust or at least caution prior to considering data sharing.

In breakout session 2 participants considered:

- **How would you describe your public authority's approach and culture around data you collect/hold? (e.g. open? cautious? risk-averse?)**
- **In your view, what are the key barriers/facilitators to sharing data more widely?**

The culture around data was largely described as protectionist. Records managers consider their first duty is to protect data; if they are obliged to share data by law they will assist in this process, otherwise the answer will be 'no'. Furthermore, decisions to *not* share data may sometimes be for ignorance of the actual legal position or of the incentives for engaging in a new data initiative. Otherwise the answer of 'no' may be given simply because there are no resources (financial, time, expertise) to do so. Some participants acknowledged the wider benefits of data sharing but simply lack the capability to engage in such activities which are considered beyond the scope of their primary public mandate. As such, public authorities' culture around data is shaped to a great extent by their statutory or departmental mandates and their purpose for collecting data from the public/their service users.



### Summary of Session 3

From the discussions in Session 3 it seems that the primary reasons why data may *not* be shared within a public authority or with external parties were concerns over data quality and organisational/individual liability. Most participants expressed or echoed their agreement with concerns over data quality and the lack of resources to 'clean' (or anonymise) data prior to sharing. Equally, participants articulated serious concerns about liability arising out of decisions taken; there was an apparent lack of procedures and infrastructure to systematically govern issues related to data sharing and novel uses of public authorities' data. Therefore decisions taken about data sharing are perceived to be particularly risky. To move from the currently protectionist culture around data, trust, transparency and educating staff were considered crucial going forward. A more outwardly focused culture, one that identifies and communicates the public interest in public authority data, would begin to also consider the risks in *not* sharing data and the harms that could arise as a result.



## Session 4: Destruction of records and data retention

The final session was chaired by Carol Porteous, Public Engagement and Citizen Science, University of Edinburgh School of Population Health Science, ADRC Scotland. In Session 4, the topic of discussion was destructions versus the retention of data in context with ongoing legal obligations to share and retain data, such as for the Scottish Child Abuse Inquiry. Other reasons for retaining records, such as for research purposes in the public interest, were also considered.

Breakout session 1 had participants consider:

- **How is your public authority reacting to the Scottish Child Abuse Inquiry?**
- **Has your retention policy schedule changed? What planning/discussions have taken place?**

Comparatively to other sessions throughout the day, the forthcoming obligation to respond to the Scottish Child Abuse Inquiry brought about the most consternation from workshop participants. There were clearly concerns arising from the uncertainty posed by the Inquiry's terms of reference as many public authorities felt unsure what records would be relevant to keep and would be relevant for responding. It was considered that there was a general 'fog' over the terms of reference as authorities continue to prepare as best as they can. In spite of the perceived chilling effect of the Inquiry and terms of reference, some participants indicated that the Inquiry had presented an opportunity to conduct information audits of their authority's record holdings, a task which in other contexts could be difficult to justify with senior management. In this sense, it was considered that preparing for the Inquiry had proved extremely useful for raising the profile and importance of records management but also to fix previously problematic arrangements of records, especially in transitioning from paper to digital formats.



In the final breakout session 2 participants discussed:

- **What records should be retained and for how long? What factors are important to consider when making decisions regarding data retention?**
- **If your authority's data was shared with another authority or third party (e.g. research centre/researcher) would their retention policies concern you?**

In this final breakout session participants raised concerns about the judgment calls they had to make over retention decisions: what records should be kept and may be of potential interest in future? Some participants indicated that legal obligations to retain data, such as for the Inquiry, means that public authorities may use this as an excuse to impede any consideration of retention periods and keep everything forever. Furthermore, it was considered easier to have a blanket rule to keep everything rather than doing a far more detailed and contextual assessment of what records were relevant to keep for various purposes and time periods. The question was asked: "What would the regulator have us do if an all or nothing approach to retention is not OK?" Overall justification is required for ongoing expenditure for maintaining historical records – calls will have to be made distinguishing between what records are actively required for the authority, versus what might be/should be destroyed, versus what might be in the public interest to retain.

Were data to be shared with others, a longer retention period than an authority's *would* be a cause for concern and definitely of interest to data sharing negotiations. Public authorities would expect justifications for the retention periods presented by those they may share their data with, as an extension of their ongoing duty of care to their public/service users.



### Summary of Session 4

There is a danger that the Inquiry may exonerate public authorities from engaging in more detailed and contextual decisions regarding retention periods. However, the preparations around the Inquiry has already resulted in greater clarity about public authorities' records holdings. For example, some authorities have considered information audits to help them meet the Inquiry's requirements. More generally, it was clear that many public authorities are uncertain as to what data should or should not be kept 'in the public interest', whether for public inquiries, research or other purposes. Moreover the issue of resources and capacity remained an issue in this final session given the work needed to make data 'ready' for longer-term retention and potential disclosure/sharing in future.



## Next steps and future engagement

The workshop facilitated honest, necessary and valuable discussions within the records management and information governance communities about challenges overcome, persistent barriers and also enablers of best practice. The PRSA has acted as a positive and motivating force within public authorities. However further work and engagement is clearly needed to more broadly address the current cultures around records management and information governance which often manifest in overly risk-averse behaviours contrary to the public interests at stake. Successes may be silent or slow to come, as good records management and information governance will always require constant review and assessment. Important to achieving the workshop's aims, in breaking down participants' larger concerns, we hope to have initiated what will be ongoing discussions and sharing of best practices in order to address individual anxieties around records management and information governance in a more manageable way.

To facilitate broader dialogue on the issues discussed at the workshop, we hope to circulate this report with relevant stakeholder communities across Scotland and the UK. This and further engagement with Scottish public authorities will help the Keeper to improve existing guidance to promote the sharing of best practices within this community. The workshop has allowed us to further understand the cultures in which records managers have been operating and what is needed to improve this. We hope that the openness of dialogue and experiential sharing at the workshop has helped to enhance the confidence of Scottish public authorities in using and sharing their data more openly when it is in the public interest to do so.

Finally, we would like to express our gratitude to Professor Chris Dibben and ADRC Scotland for hosting and supporting this workshop.