

Open Information and Exceptions Policy of the Natural History Museum, London

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Abstract

There have been few, if any, open data and information management policies openly published from natural science collections. This paper contextualises the rationale for publishing the Open Information and Exceptions Policy of the Natural History Museum, London and provides the policy itself. The policy outlines how the Natural History Museum puts the principle of 'open by default' into practice; and includes sections on purpose and scope, relationship to relevant legislation (which always takes precedence over the policy), the categories of possible exceptions to open information release, what happens when exceptions are declared, relations to UK government information security classifications and definition of terms.

Keywords

natural history collections, data management, information management, open data, open information, data policy, digital collections management, regulations, compliance, information policy, freedom of information, digitisation

Context

The European Research Infrastructure DiSSCo (Distributed System of Scientific Collections - <https://www.dissco.eu>) aims to digitally unify and mobilise all European natural history assets, to ensure that collections data are easily findable, accessible, interoperable and reusable (FAIR - Wilkinson et al. (2016)). This will transform a fragmented landscape of collections into an integrated knowledge base, enabling researchers to use and interconnect different collections. DiSSCo represents the largest ever formal agreement between natural history museums, botanical gardens and collection-holding research institutions and universities in the world.

The Natural History Museum is a key partner in DiSSCo, both from the European Research Infrastructure perspective and its work in promoting and establishing the DiSSCo UK node and network of UK collections (Smith et al. 2022). As part of our ongoing work, we recognise the need to share a broad range of documentation and best practice with our peers. The Museum has conducted a programme of specimen digitisation for some ten years, releasing collections data through a data portal (<https://data.nhm.ac.uk/>, Scott et al. (2019)).

While there are other examples of collections policies available online (e.g. Hyvärinen et al. (2020)), we are not aware of any natural science institution formally publishing their open information policy, nor any exceptions that they apply to open information release. In order to meet their objectives, both DiSSCo and DiSSCo UK need to implement policies that support the release of FAIR data, but also consider the complex needs of organisations that operate with mixed business models and legal entities.

The Natural History Museum is an exempt charity*¹ regulated by the UK's Department for Digital, Culture, Media & Sport, but also operates a separate commercial arm, The Natural History Museum Trading Company Ltd. (for shops, commercial hire etc.). This Open Information and Exceptions Policy applies to both legal entities and recognises that complexity, but establishes our commitment to 'open by default', as well as the reasons why we may, by exception, withhold data from open publication either wholly or for a defined period or publish data under more restrictive licensing conditions. The reasons can be complex and nuanced, but we hope by sharing our policy that it will provide a reference point to make it easier for others to adopt an 'open by default' approach.

The examples of information types provided under each exemption are not exhaustive and may themselves be subject to case-by-case nuances.

The sections below are Version 2.1 of the Policy, which is updated periodically - this version was approved by the Trustees of the Natural History Museum in November 2023.

Please note: this policy is for reference only and is not a substitute for professional legal advice.

Purpose and scope

The Natural History Museum aims to make information openly accessible whenever possible and appropriate. This underpins our vision of a future where people and planet thrive and our mission to create advocates for the planet; and reflects our responsibilities as a public body and our roles as a public custodian of collections of global origin and as a scientific research organisation.

The Open Information and Exceptions Policy applies to all Museum Information whether generated under the Trustees of the Natural History Museum or the Natural History Museum Trading Company – for example, data, documents, images, video, sound recordings – created and held in the course of Museum activities, whether for scientific, public engagement, development or administrative purposes.

The Open Information and Exceptions Policy translates the principle of ‘open by default’ into practice by setting out what this means for the Museum and identifying the exceptional circumstances under which Museum Information will be withheld from viewing or access by the public. This is achieved by:

- Connecting the policy to relevant legislation and best practice;
- Setting out the categories of exceptions to data release and how to consider whether they are applicable.

The scope of the Exceptions outlined in this policy is limited to access to Museum Information. When making information accessible, it is good practice to state the terms of, or any restrictions on, re-use (e.g. a copyright statement or any licence that is being applied). Re-use (sharing, repurposing, republishing) of information is subject to copyright or other intellectual property rights considerations, as well as the [Re-use of Public Sector Information Regulations 2015](#). It is noted that the publication or provision of access to Museum Information does not automatically grant a licence for its re-use. It should be noted that some copyright exceptions cannot be overridden by contract, meaning some uses of released information cannot be prevented even if precluded by contractual terms.

The Museum’s Technology Solutions Team is committed to ensuring that underlying technology will enable the Open by Default principle to be realised, providing that there is no applicable Open Information Exception.

Relationship to relevant legislation

Legislation, including The Freedom of Information Act (FOI) and the Environmental Information Regulations (EIR), take precedence over Museum exception decisions.

Since the [Freedom of Information Act 2000](#) (FOI) came into effect in January 2005, the Museum has been required to make information accessible when requested by the public, unless one or more of a specified list of exemptions apply. From September 2013, this has

also included automatically enabling re-use of requested datasets, under licence if containing copyright material. The Museum is also required to proactively publish certain organisational information (e.g. minutes, information on contracts and expenditure, forward planning, information about the collections) according to a publication scheme as laid out by the Information Commissioner's Office.

The [Environmental Information Regulations 2004](#) (EIR) require environmental information that we hold to be made accessible on request, unless one or more specified exceptions apply.

The [Public Records Act 1958](#) (with subsequent revisions) gives the public the right of access to Museum records which are more than 20 years old, unless exempt under FOI or EIR.

Part of the Museum's core legal duty under the [British Museum Act 1963 Section 3](#) is to make its collections available to the public and we believe we should interpret this for a digital era as regards making digital information relating to the collections openly available.

When a request for information is received under these pieces of legislation, any internal exceptions will be taken into account when considering the response. However, only specific FOI exemptions or EIR exceptions can be used to withhold information from release. It should be noted that some FOI exemptions can remain in place for a long period of time, for example, [section 40 – personal information](#) can apply for the lifetime of the individual concerned.

Potential FOI exemptions that may be considered on a case-by-case basis have been listed for each exception below, to illustrate the overlap.

Open Information Exceptions

Below are the Museum's list of permitted exceptions to making information available under the 'open by default' principle.

- i. Institutional profile and brand value;
- ii. Commercial value;
- iii. Research competitiveness;
- iv. Third party rights;
- v. Sensitive collection information;
- vi. Donor or funder conditions;
- vii. Confidential information;
- viii. Legal or regulatory compliance.

The expectation is that information will be released, but these possible exceptions will be considered and applied where good reason is demonstrated.

i. Institutional profile and brand value

To be used for Information which would have either:

- a negative impact on the Museum's brand or any aspect of its reputation (corporate, scientific, educational etc.);
- a more positive impact if publication is delayed (time limited exception/embargo).

For example: draft financial data, unsubstantiated research conclusions, meeting notes, press embargoed content, communications with our Patron.

Before Information is enabled for public access, the information owner must consider the potential impact of its release.

If the information owner is unsure, the Press Office and, if appropriate, the Science Directorate or the Registry should be consulted.

Potential FOI exemptions: [section 22 – information intended for future publication](#).

ii. Commercial value

To be used for information which represents a potential source of revenue to the Museum. This should be a positive assertion of value, not a precautionary measure. NHM will actively identify and protect the knowledge assets and Intellectual property it generates for commercial value.

Reminder: the application of this exception should be considered only if access to the Information poses a threat to the Museum's ability to commercially exploit the Information. This exception is not intended to inhibit access to collection images, rather to protect the Museum's interests where Information has value to industry.

For example: Information relating to a potential patent application.

Images of specimens taken for collection management purposes will generally *not* be considered commercial.

Potential FOI exemptions: [section 43 – commercial interests](#).

iii. Research competitiveness

To be used for unpublished data generated by NHM scientists which, if released immediately, would negatively impact the Museum's research competitiveness and ability to attract external funding.

For example: data which the NHM would seek to exploit through further research.

It should be noted that any embargoes resulting from this exception apply internally as well as externally, to anyone beyond the Principal Investigator and to any named individuals. Research competitiveness embargoes should be time limited.

Potential FOI exemptions: [section 22 – information intended for future publication](#); [section 22A – research](#).

iv. Third party rights

To be used for information where rights are owned wholly or partly by one or more third parties.

For example: Information assets created and owned solely by a third party or parties. This includes Intellectual Property the Museum has licensed from third party rights holders where that licence does not cover sharing with those outside the Museum. This could also include IP shared or created in the process of collaborative work with another organisation, where we do not have the third party's permission to make their IP available to the public.

Before any such information is to be enabled for public access, the project lead or information owner should ensure that agreements and contracts are checked for rights and conditions and apply this exception as appropriate.

Please be aware that copyright laws can restrict/prevent the sharing of Information assets with the public as well as their re-use. Notwithstanding this, Public Records which are open to public inspection in pursuance of the Public Records Act 1958, may be copied and a copy may be supplied to any person, by or with the authority of any officer appointed under that Act, without infringement of copyright.

Data subject to third party rights cannot be re-licensed and may only be shared with the permission of the third party. Data obtained from third parties should be received wherever possible in line with the Museum's open by default policy.

Potential FOI exemptions: [section 36 – prejudice to effective conduct of public affairs](#); [section 43 – commercial interests](#); [section 44 – prohibitions on disclosure](#).

v. Sensitive collection information

To be used for information relating to sensitive or valuable collections which is not suitable to be made known to the public or would compromise collection or personnel security.

For example: information on rare or endangered species, human remains and valuation data.

Before information is enabled for public access, the information owner must consider its sensitivity.

Generally, data of this nature should be actively excluded from release (e.g. removed from datasets before publication). Sensitive datasets shared with collaborators should be accompanied by a confidentiality agreement that prohibits re-sharing with any parties not explicitly permitted as part of the agreement.

Where information may be sensitive, the decision whether to apply this exception should be subject to a balanced view of benefits (e.g. the information may be of benefit to conservationists) and risks (e.g. it may be used by poachers), taking into account what related information is already in the public domain.

Potential FOI exemptions: [section 27 – international relations](#); [section 31 – law enforcement](#); [section 36 – prejudice to effective conduct of public affairs](#); [section 38 – health and safety](#); [section 39 – environmental information](#); [section 40 – personal information](#).

vi. Donor or funder conditions

To be used for information relating to donations or projects where specific conditions have been stipulated regarding sharing and use of the collection and data derivatives.

For example: geological surveys funded by commercial partners or funded acquisitions, grant or donations from third party companies or individuals with privacy clauses.

Before information is enabled for public access, the information owner must ensure that donation/funding conditions have been checked and apply this exception as appropriate (including any restriction on donor or funder personal information).

Where explicit conditions regarding sharing and use exist and rights ownership is retained by the Museum, the information should be released to the fullest extent permitted with reference to relevant regulations and internal policies.

In general, this exception is only likely to apply where it overlaps with other exceptions under this policy, such as temporary embargoes or commercial value – the majority of our donors and funders prefer that information is made open or, in many cases, have policies that insist on this (e.g. most research grants).

Potential FOI exemptions: [section 36 – prejudice to effective conduct of public affairs](#); [section 40 – personal information](#); [section 41 – information provided in confidence](#).

vii. Confidential information

To be used for confidential personal or corporate information, including relating to companies working with the Museum.

For example: personal details of staff or customers, internal draft corporate strategy documents, contractual information provided in confidence, information relating to physical or cyber security measures.

Before information is enabled for public access, the information owner must consider its confidential nature.

Personal information that is made public via published profiles on the NHM website is not covered by this policy as it is the personal choice of staff whether to publish it.

Potential FOI exemptions: [section 36 – prejudice to effective conduct of public affairs](#); [section 38 – health and safety](#); [section 40 – personal information](#); [section 41 – information provided in confidence](#); [section 42 – legal professional privilege](#); [section 43 – commercial interests](#).

viii. Legal or regulatory compliance

To be used for information which must be managed in accordance with legal or regulatory requirements.

As stated above, relevant legislation always takes precedence over this policy. In addition to the legislation listed above, this may also include, for example: Access and Benefit Sharing, Traditional Knowledge Agreements, CITES (Convention on International Trade in Endangered Species of Wild Fauna and Flora) status, relevant law in other countries/jurisdictions, incomplete acquisitions or data associated with items no longer held by the Museum.

Before information is enabled for public access, the information owner must be confident that no legal or regulatory conditions will be breached by its release, by checking relevant documentation and/or consulting stakeholders.

Potential FOI exemptions: [section 41 – information provided in confidence](#); [section 44 – prohibitions on disclosure](#).

What happens when an exception is declared?

If Information is considered to fall within any of these exceptions, one or more of four basic actions will occur:

1. No release (e.g. for sensitive/confidential information);
2. Time-delayed release (i.e. embargo, with an agreed time limit and process for review for extension or subsequent release);
3. Release without licence for re-use ('All Rights Reserved'). It should be noted that information released or otherwise published without an associated licence permitting its re-use, may still be legally reproduced by third parties to the extent that the re-use is legally permitted under a relevant copyright exception;
4. Release with conditions:
 - a) Release under a relevant licence from the Museum;

- b) Release with third party conditions;
- c) Release according to legal/regulatory conditions.

Within all of these actions, consideration should be given to the granularity and types of information being released – for example, rather than applying an exception to a whole dataset, certain fields or items might be redacted under this policy for later release or no release, enabling the rest of the information to be made available.

When an exception is declared, a record of the decision-making should be retained within the business area.

Relation to Government Security Classifications

The Museum follows the Government Security Classifications policy for its information assets. The policy applies to all information that the Museum collects, stores, processes, generates or shares to deliver services and conduct business, including information received from or exchanged with external partners. All Museum staff have a duty to respect the confidentiality and integrity of any Museum information and data that they access and are personally accountable for safeguarding assets according to their classification.

All routine business, operations and services should be treated as OFFICIAL. This information does not have to be explicitly marked, but all staff have a duty of care to ensure that it is handled and shared responsibly and only accessed by authorised individuals for legitimate business reasons.

As per the Museum's Information Assurance Framework, OFFICIAL-SENSITIVE (formerly PROTECT) should be applied to information assets:

- a) containing confidential personal information, or
- b) designated as 'Museum sensitive', that is, containing information that the Museum would not wish to be made known to the public, at least without a controlled release process.

This should be marked in the header (of documents) and file name and, if held in SharePoint or Exchange, should be labelled using the Microsoft Office 365 Security labels.

The OFFICIAL-SENSITIVE marking indicates that particular care should be taken when handling a document and it should only be shared, securely, on a 'need-to-know' basis. The marking does not automatically exempt the document from release under FOI, but will be taken into consideration if a request for it is received.

For practical purposes, information covered by most of the Open Information exceptions should be treated as OFFICIAL, so no marking up is required.

However, the OFFICIAL-SENSITIVE classification will generally apply to documents covered by the following exceptions:

- Institutional profile and brand value;
- Confidential information;

and potentially:

- Sensitive collections information;
- Legal or regulatory compliance.

Wherever possible, the OFFICIAL-SENSITIVE classification should also be marked up in the metadata of relevant assets in the CMS and MAM. For the other exceptions, it is possible that related documentation, for example, contracts or agreements, should be considered and marked as OFFICIAL-SENSITIVE, but the information itself (e.g. images or datasets) can be managed as OFFICIAL.

If any exception is applied to information, consider whether related documentation should be marked as OFFICIAL-SENSITIVE.

For further advice on Government Security Classifications, contact the Records Manager.

Definitions

‘Access’ means ability to view Information, whether because it has been proactively published or is released to an enquirer upon request.

‘Information’ means all recorded information including (without limitation) written and textual works, data, databases, photographic and digital images, film footage, sound recordings, publications, reports, research, designs and artwork.

‘Information owner’ refers to the person who is responsible for the information and its publication, for example, a collections manager or an Engagement Group staff member who has commissioned photography or a scientist who has created a dataset. Information owners are not solely responsible for decisions about the release or non-release of information, but will be required to advise Museum stakeholders on the application of any exceptions.

‘Enabled for public access’ refers to sharing or publishing content to the public.

‘Exception’ refers to an exception to the open by default principle. Exceptions are identified and pre-agreed circumstances in which the Museum will not allow access to its Information.

CMS refers to the Museum’s Collections Management System.

MAM refers to the Museum’s Media Asset Management system.

'Open by default' means the inherent assumption that the public will be permitted to access/view Information created by the Museum.

'Re-use' means using Information in ways that involve repurposing, sharing or republishing it.

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Author contributions

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- **Ruth Benny:** Writing - original draft (original policy), Writing - review and editing (original policy and updates).
- **Esme Chapman:** Writing - review and editing (policy updates).
- **Nancy Chillingworth:** Writing - original draft (original policy), Writing - review and editing (original policy and updates).
- **Helen Hardy:** Supervision, Conceptualization (policy updates), Writing - original draft (policy updates), Writing - review and editing (policy updates).
- **Laurence Livermore:** Supervision, Conceptualization (policy updates), Writing - original draft (policy updates), Writing - review and editing (policy updates).
- **Polly Parry:** Conceptualization (original policy), Writing - original draft (original policy), Writing - Review and editing (original policy).
- **Ben Scott:** Writing - Review and editing (original policy).
- **Vincent Smith:** Supervision, Conceptualization (original policy), Writing - original draft (original policy), Writing - review and editing (original policy and updates).
- **Matt Woodburn:** Conceptualization (original policy); Writing - original draft (original policy), Writing - review and editing (original policy).

Conflicts of interest

The authors have declared that no competing interests exist.

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Endnotes

- *1 See UK Government Guidance on Exempt charities (CC23):- What it means to be an 'exempt' charity and how exempt charities are regulated. <https://www.gov.uk/government/publications/exempt-charities-cc23>