

NICS Guidance: Official information held in non-corporate communications channels

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1. NICS departments must comply with a range of information governance policies and legislation, including the Freedom of Information Act (FOIA).

“For the purposes of this Act, information is held by a public authority if— (a) it is held by the authority, otherwise than on behalf of another person, or (b) it is held by another person on behalf of the authority”, the “authority” being the Department.

Point (b) above means that, in circumstances where another person holds information on behalf of a public authority, the information is considered to be held by the authority for the purposes of FOIA. This includes information held in non-corporate communications channels (i.e., any unofficial application or platform).

The definition of information: For the purposes of FOIA, “information... means information recorded in any form.”

2. Ensuring that information relating to departmental business is recorded on official record keeping systems (the official repository for NICS currently being

Content Manager), helps to avoid the complications of requesting searches of non-corporate communications channels when processing an information request.

If you hold departmental information in non-corporate channels, you may be asked to search these accounts and/or devices. If it is decided that your personal email account, messaging accounts or personal mobile device may include information which falls within the scope of the request, and which is not already held elsewhere, you may have to provide this information for inclusion in the response.

Concealment and deletion

3. Erasing, destroying, or concealing information with the intention of preventing its disclosure following receipt of a request is a criminal offence under section 77 of FOIA. This offence can apply to both a public authority and to any person who is employed by, is an officer of, or is subject to the direction of the authority. For example, where information that a request covers is knowingly treated as not held because it is in a non-corporate communications channel, this may count as concealment intended to prevent the disclosure of that information. The person concealing the information may be liable to prosecution.
4. The use of non-official channels such as social media has been challenged in the courts by transparency campaigners, and often attracts unfavourable political and media attention. In addition, if discussions, advice and decisions with financial implications are not properly recorded, leaving significant gaps in the 'trail', this will attract criticism from internal audit, the NI Audit Office and the Public Accounts Committee.

What are non-corporate channels?

5. As a rule, civil servants should *not* be processing official information using anything other than official devices and official channels. It is however recognised that there may be exceptional circumstances when this is not possible, for example as a business continuity measure when official systems are unavailable, and there is no other option but to use non-corporate channels. These might include but are not limited to:

- Personal email accounts e.g., Hotmail, Gmail, ProtonMail or Yahoo Mail
- Private messaging accounts e.g., WhatsApp, Signal or Telegram
- Direct messages sent on apps such as Twitter or via Facebook messenger
- Personal mobile devices, including text messages on mobile phones and voice recordings

Technological changes mean that new messaging apps, platforms and channels are developed over time. Therefore, you should not assume that the above is a definitive list of non-corporate communications channels.

6. Using unofficial channels for business-related information even in exceptional circumstances presents several risks in terms of non-compliance with best practice in records management and good recordkeeping as well as statutory obligations.

For example, non-official channels:

- often have limited search functionality
- are unlikely to have retention and deletion periods that align with those of your department, with the risk of information only being held for a short time or messages being auto deleted
- often have limited ability to export information to an official system or to create records which you can transfer onto official systems
- may limit accessibility to one individual or a small group, while there could be a business need for such information to be more widely available
- may make it more difficult for you to meet your obligations under data protection and access to information legislation
- offer little or no assurance around the location and security of information being processed, including location of servers and cloud services
- could lead to you being held personally liable for any security breaches

What is the NICS approach to information held in non-corporate channels?

7. The [NICS Records Management \(RM\) policy](#) states that:

“such non corporate channels are not designed for use in record keeping and should not be used by Civil Servants for business-related record keeping. Doing so will be considered a breach of records management policy, and risks breaching information security and governance framework and various legislative requirements including FOI, UKGDPR where personal data may be included, and various associated Government codes of practice. In certain

circumstances you may be legally obliged to hand over devices and passwords.”

What does this mean for me?

8. You should always ensure that you use corporate channels for official business. Where this is not possible, you must ensure the official information is saved onto corporate systems as quickly as possible, e.g., Outlook or Content Manager, and removed as quickly as possible from the non-corporate channels.

You should be aware of the potential for a private conversation on non-corporate channels to ‘drift’ into a discussion about official matters. For example, a discussion about a social event drifting into a discussion about a work meeting. At the point that the discussion becomes about official business, you should use official communication channels, or at the very minimum, forward the official part of conversation to an official system if it needs retained as record.

Where do I go for help?

If you require any further information about FOIA, Records Management and the use of non-corporate channels, you should contact your Information Management Unit.

Contact details are available at this [link](#), and from the ICO: [Official information held in non-corporate communications channels | ICO](#)