



Government
Statistical Service

**NATIONAL
STATISTICIAN'S
GUIDANCE:**

**Confidentiality
of Official Statistics**



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**Confidentiality
of Official Statistics**

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The National Statistician

The National Statistician – a statutory office holder – is also the Chief Executive of the UK Statistics Authority Board and the Board's principal adviser on:

- the quality of official statistics
- good practice in relation to official statistics, and
- the comprehensiveness of official statistics

She is also the Head of the Government Statistical Service (GSS) which is a network of professional statisticians and their staff operating both within the Office for National Statistics and across more than 30 other government departments and agencies.

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Introduction

**Dame Karen Dunnell DCB
National Statistician**

Edition 1.0 of the Code of Practice for Official Statistics was published in January 2009. It provides a benchmark of good practice for all bodies producing official statistics. Complying with the Code will help provide assurance that official statistics have been produced to high standards and that they serve the public good. It will also help raise trust and confidence in those statistics.

This supplementary guidance to the Code is intended to help producers of statistics, other officials and ministers to interpret, understand and implement the Code. It should be viewed as supporting documentation and should not be regarded as prescriptive.

It is anticipated that the guidance will be reviewed and updated periodically, in response to experiences of using it as well as to reflect possible updates to the Code itself. Comments on this first edition of the guidance would therefore be most welcome.

A handwritten signature in black ink that reads "Karen Dunnell". The signature is written in a cursive, flowing style.

August 2009

Objectives

1. This document provides guidance to all producers of official statistics on interpreting and implementing the 'Principles' and 'Practices' in the Code of Practice for Official Statistics which relate to the confidentiality of those statistics.
2. Compliance with the Code will help provide assurance to data providers that their private information will be protected and used only for statistical purposes.
3. Please note that references to the 'Head of Profession for Statistics' are also intended to refer to the equivalent lead official in each organisation.

Overview

4. The 'Fundamental Principle' of confidentiality in official statistics in Europe was established formally in 1992 by the United Nations Economic Commission for Europe (UN ECE)¹. The sixth Fundamental Principle says:
Individual data collected by statistical agencies for statistical compilation, whether they refer to natural or legal persons, are to be strictly confidential and used exclusively for statistical purposes.
5. The confidentiality principle – Principle 5 – in the Code of Practice for Official Statistics (hereafter referred to as 'the Code') is substantially the same as the sixth UN Fundamental Principle. Both provide a confidentiality guarantee, and both limit the uses of data compiled for official statistics to statistical purposes only.

1 www.unece.org/stats/archive/docs.fp.e.htm

6. This guidance is not intended to take the place of appropriate legal advice. It is essential that producers consult with lawyers to ensure that processing of information is lawful. In particular producers need to ensure that all processing of data is compliant with human rights law; the Data Protection Act for personal data and any other act concerning the lawful collection of data (for example, the Statistics of Trade Act for business data). It is also essential that this guidance is treated as acting in conjunction with the legal advice given.

Principle 5 and associated practices

Principle 5: Private information about individual persons (including bodies corporate) compiled in the production of official statistics is confidential, and should be used for statistical purposes only.

7. The Code puts 'private information' into the scope of the confidentiality guarantee. Information that is lawfully in the public domain and readily available to the public does not, under this Code, automatically become confidential when it is used to produce a statistic. New legal acts (for example, the Freedom of Information Act, Re-use of Public Sector Information Regulations², INSPIRE Directive³, Environmental Information Regulations⁴) have removed confidentiality obligations from some information sources. At the same time, technology has made this information readily available to most people (for example, Google Maps, Companies House Direct⁵). It has become untenable to guarantee confidentiality to information that is lawfully available to, and readily

2 www.opsi.gov.uk/si/si2005/20051515.htm

3 <http://inspire.jrc.ec.europa.eu/>

4 www.opsi.gov.uk/si/si2004/20043391.htm

5 www.companieshouse.gov.uk/toolsToHelp/chdDirectInfo.shtml

accessible by, members of the public. The *Statistics and Registration Service Act 2007* reflects this change by making an exception to its confidentiality rule for information that has already lawfully been made available to the public. The new Regulation for European Statistics also excludes public domain information from its definition of statistical confidentiality.

8. What, then, is 'private information'? This principle applies to information that:
 - relates to an identifiable legal or natural person, and
 - is not in the public domain or common knowledge, and
 - if disclosed would cause them damage, harm or distress
9. In particular, producers of official statistics should be aware of the expectation individuals may have when their information is used to produce statistics. Information relating to an individual should be considered by a producer of statistics to be 'private' if it was:
 - provided with the expectation that the information would be kept out of the public domain
10. Further, legislation may specify that certain information is private (a 'prohibition on disclosure'⁶) and such information is of course subject to this principle whether or not the above conditions for private information are relevant.
11. A 'legal person' is a company, enterprise, or other organisation that has a legal identity. A 'natural person' is a member of the public. Where the term 'individual' is used in the Code it means both legal and natural persons, both living and dead.

6 www.dca.gov.uk/StatutoryBarsReport2005.pdf

12. The Code does not extend its confidentiality guarantee to socially-defined or self-defined groups. For example, a group formulated for the purpose of policy formulation in government is not of itself guaranteed confidentiality and the group can be identified in official statistics. However, the individuals within the group do enjoy the guarantee, and their individual identity and the private information that makes them part of this (or another) group is confidential.
13. Official statistics are often produced from the administrative data sources and management information systems that organisations need in order to carry out their primary administrative and operational functions. Similarly some surveys have a dual statistical and administrative role⁷. Principle 5 should not be read so as to suggest it has a backward-reaching effect on the primary administrative data source. Merely because an official statistic is derived from them does not mean that the administrative data holdings of an organisation can now be used only for statistical purposes. Its effect will depend on the circumstances. For example, if statistics producers in an organisation extract snapshots from an administrative database or survey, or receive feeds from a dynamic administrative information system, then the effect of this Code is to require that the information taken out for statistical compilation should be used for statistical purposes only.

⁷ For example, the *Agricultural Statistics Act 1979*
www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1979/cukpga_19790013_en_1

14. Officials with statistical skills and tools might use them to extract and analyse information for the administrative purposes of the organisation (for example, to target individual fraudulent non-payers of tax). This is not for the purpose of statistical compilation and thus is outside the scope of the Code. Producers of official statistics involved in administrative functions should seek guidance from the *National Statistician's Code of Conduct*⁸ and, more specifically, the *National Statistician's Guidance: Use of Administrative and Management Information*.

Principle 5, Practice 1: Ensure that official statistics do not reveal the identity of an individual or organisation, or any private information relating to them, taking into account other relevant sources of information.

-
- Most relevant to:
- senior officers responsible for publishing statistics in their final form
 - experts in statistical disclosure control, statistical design, and information laws
-

15. This practice requirement delivers the first element of the Principle. Confidentiality will be maintained by not revealing the identity of a person nor any private information relating to them.
16. The European Article 29 Working Party Opinion⁹ on the concept of personal data provides an authoritative source of guidance for the meaning of 'identify' and 'relating to'.

8 To be published September 2009

9 http://ec.europa.eu/justice_home/fsj/privacy/docs/wpdocs/2007/wp136_en.pdf

17. A statistic will not usually directly reveal the identity of an individual, but more usually the risk is that the statistic may make an individual *identifiable* – the individual has not yet been identified, but it may be possible to do so. There are a great number of conceivable circumstances by which an individual may be identifiable in a statistic but these may be grouped into ‘intruder scenarios’ for the purpose of output design¹⁰.
18. When does information ‘identify’ an individual? The Opinion of the working party was that account should be taken of the ‘means likely reasonably to be used’ to identify an individual. Thus the hypothetical but remote possibility of identification is not something that automatically makes a statistic disclosive. The design and selection of intruder scenarios should be informed by the means likely reasonably to be used to identify an individual in the statistic and, therefore, these will vary according to the topic of the statistic, its uses, and other factors.
19. In this Opinion, information ‘relates to’ an individual if:
 - it is biographical or descriptive of the individual, or
 - it is information used to treat, measure or evaluate the behaviour of the individual, or
 - the use of the information will have a direct impact on the individual
20. The UK Information Commissioner has produced a useful quick reference guide on the subject which contains a decision tree for establishing if information is personal data¹¹.
21. This practice statement requires producers of official statistics to take account of other sources of information when considering disclosure risk. These sources may be public or private but the relevance of them is determined by whether they are likely reasonably to be used to identify an individual and reveal information about them. Guidance on determining the relevance of another source of information is included in the advice issued to members of the Government Statistical Service (GSS)¹¹.

10 www.knowledgenetwork.gsi.gov.uk/statnet/statnet.nsf/RefDocs/DBHL-6ZYFQN?OpenDocument

11 *What is personal data? – A quick reference guide*, available to download from: www.ico.gov.uk/tools_and_resources/document_library/data_protection.aspx

22. Some surveys ask for the consent of respondents for disclosure of some of the information obtained. That practice should not be seen as conflicting with the Practice 1 statement. Information that the respondent consents to be for publication in a statistical release is not considered by the respondent to be private information, and the confidentiality commitment does not therefore apply.

Principle 5, Practice 2: Keep confidential information secure. Only permit its use by trained staff who have signed a declaration covering their obligations under this Code.

-
- Most relevant to:
- information asset owners
 - information systems providers
 - human resources and staff training providers
-

23. The report on *Data Handling Procedures in Government* provides a benchmark for keeping information secure¹². All producers of official statistics can be expected to apply fully the minimum mandatory measures set out in that report.
24. Any information used to produce official statistics that relates to identifiable persons should be protectively marked. Usually this marking will be 'PROTECT' but for large volumes of individual confidential records the marking may be 'RESTRICTED'.

12 www.cabinetoffice.gov.uk/reports/data_handling.aspx

25. Cabinet Office (CO) guidance states that the information asset officer (IAO) must be a senior manager with day to day responsibility for business functions related to the information asset. CO suggest that this would normally be at Senior Civil Service (SCS) level. If the Head of Profession for Statistics (or equivalent lead official) is a member of the SCS, then the organisation might consider making them their IAO for information obtained, or extracted, to produce official statistics. Alternatively, the relevant SCS member responsible for owning the data and managing the statistical area might be appointed IAO.
26. It is an absolute requirement of the Code that only persons who have undergone suitable training and who have signed a declaration of their obligations to confidentiality can use confidential information for official statistics purposes. Organisations should consider how this practice requirement might extend to contractors, consultants, researchers, and other third-party individuals who handle personal information. Some third parties (service delivery partners) will be producers of official statistics and subject to this practice statement and, therefore, the staff will already have signed a declaration and had training. Some producers of official statistics will not handle personal information. It is for the HoP to decide if they should sign a declaration.

27. Similarly it is for the HoP to determine how to implement the requirement for training of staff involved in the production of official statistics. Where such training is already in place, it typically provides both a general background to the Code, departmental policy, information laws, and conduct within the statistical profession, and also some specific elements to ensure the particular local rules and policies relating to statistical production are understood. Decisions should also be made about whether to include training as part of staff induction and/or periodically thereafter, as necessary. It would be reasonable for training to be proportionate to the risks (that is, the impact and likelihood) of disclosure or data loss, and to take account of prior learning, experience, and the nature of the employing institution. Organisations may also consider that the training for staff already required by the report on *Data Handling Procedures in Government* may be adapted or adopted to meet the requirements of this Principle.
28. Examples of standard declarations for persons handling personal information for official statistics can be found in Annexes A and B. HoPs should consider issuing declarations or equivalents, perhaps as part of training or induction, to specifically address the confidentiality obligations in the Code. The practice statement does not address renewing the declaration, but HoPs might consider linking the re-signing of the declaration with the cycle of training their staff undertake.
29. Organisations must consult internally to ensure that declarations are in a form that is compatible with the terms and conditions of staff employment. Where possible, declarations should be considered a reiteration of existing employment contract or *Civil Service Code* commitments, and not an extension of them. It is likely to be the case in many organisations that the declaration will not introduce a new condition and related disciplinary measure, but will instead bring out for particular attention those particular conditions that apply to working under the Code.

Principle 5, Practice 3: Inform respondents to statistical surveys and censuses how confidentiality will be protected.

Most relevant to:

- survey and census managers
- Privacy Impact Assessments

30. Survey good practice dictates that survey respondents should be informed directly of the purposes of an inquiry. This should include the purposes of other parties who may be given research access to the data in its confidential form, the identities of survey partners or members of consortiums who will use the data in that form, and for dual purpose surveys any non-statistical uses the data will be used for. The practice statement requires that respondents are informed about how confidentiality will be protected under those circumstances. The practice statement also requires that the way the information at publication is protected is also provided.
31. There is a balance to be achieved between providing enough information to be fair to the respondent, yet not so much as to overwhelm the respondent with information.
32. As with any other government ICT system, all survey and census systems that collect private information about individuals are required to have a Privacy Impact Assessment (PIA) when there is a significant change to the system, or otherwise within five years. The Information Commissioner's Office provides a guide to PIAs¹³.
33. It is good practice to provide information to the public in general about how confidentiality is protected. The Office for National Statistics, for example, publishes a Survey Charter¹⁴ and advance leaflets for each of its social surveys.

13 www.ico.gov.uk/for_organisations/topic_specific_guides/pia_handbook.aspx

14 www.statistics.gov.uk/about/ons/survey_charter.asp

34. The information provided to respondents should be treated as a binding promise about how their data will be used. If it is thought necessary to breach this promise, the procedure set out in the fifth practice statement is relevant.
35. While outside the scope of this practice statement, it is relevant to mention that, under the First and Second Data Protection Principles, the use of administrative data collections for statistics and research purposes should be included in the fair processing notices given to data subjects.

Principle 5, Practice 4: Ensure that arrangements for confidentiality protection are sufficient to protect the privacy of individual information, but not so restrictive as to limit unduly the practical utility of official statistics. Publish details of such arrangements.

-
- Most relevant to:
- senior officers responsible for publishing statistics in their final form
 - experts in statistical disclosure control, statistical design, and information laws
-

36. The sixth UN Fundamental Principle for confidentiality referred to in the overview is balanced by the first UN Principle which says '*... official statistics that meet the test of practical utility are to be compiled and made available on an impartial basis by official statistical agencies to honour citizens' entitlement to public information.*'
37. Practice 1 within Principle 5 of the Code would be easy to achieve without this need for balance. Producers of official statistics are to consider the risk to confidentiality in relation to the utility of the statistic. In some cases, the greater the utility of the statistic, the greater the risk to confidentiality.

38. This practice statement suggests that the design of a statistic should achieve the obligation to protect against disclosure but then should be optimised to include as much detail in the statistic as is reasonably possible. This is a change from the former Code, which required that the disclosure control settings should be as extensive as possible while still meeting specific user needs.
39. The obligation to make disclosure control methods sufficient, yet not overly restrictive, makes the selection of disclosure control method important because while any method can be set to achieve confidentiality protection, some methods achieve better utility for the same level of protection. The GSS guidance referenced in footnote 10 provides advice on developing confidentiality rules and the selection of methods.
40. The practice statement requires that the selection of methods to balance disclosure risk and utility for an official statistic are to be published, perhaps as part of the metadata for the statistic. However, it is important to ensure that the method is not described in such detail as to add to the risk of disclosure, by giving an intruder the information needed to undermine the protection.

Principle 5, Practice 5: Seek prior authorisation from the National Statistician or Chief Statistician in a Devolved Administration for any exceptions, required by law or thought to be in the public interest, to the principle of confidentiality protection. Publish details of such authorisations.

Most relevant to:

- officials responsible for legal issues, Freedom of Information requests, other requests for access
 - HoPs (or equivalent lead officials)
 - National Statistician and chief statisticians
-

41. There are circumstances where the law either requires or permits the disclosure of private information.
42. It is important to distinguish between a legal 'obligation' and a legal 'power/authority' to disclose private information.
43. Examples of a legal obligation are a court order, or a decision notice issued by the Information Commissioner. In almost every case there will be a right to a hearing or an appeal, and it is appropriate to use these legal processes to defend the principle of confidentiality. Should the hearing or appeal be lost, the information should be disclosed with the prior knowledge and authorisation of the National Statistician or the chief statistician in the relevant devolved administration.
44. The Data Protection Act and other legal provisions allow for the disclosure of private information in certain circumstances. Some statistical statutes include discretionary gateways for non-statistical uses¹⁵. When the disclosure of private information is lawful but discretionary it becomes a matter of balancing the public interest in the disclosure.
45. For example, it will usually be lawful, but discretionary, to provide the police with private statistical information thought to be relevant to a criminal investigation. In normal circumstances it is appropriate to refuse to provide private information obtained for statistical purposes until the police provide a court order or other instruction with legal force. In some circumstances the balance of public interest in disclosure may outweigh the public interest in statistical confidentiality. If so, that recommendation should be made to the National Statistician/chief statistician, and acted upon only with their authorisation. A record will be maintained by the National Statistician/chief statisticians.

15 www.opsi.gov.uk/acts/acts2007/ukpga_20070018_en_3#pt1-pb11-l1g39. See S39(4)

46. Another circumstance that may arise is where through statistical analysis a matter is identified that is important to the vital interests of an individual or group or even the wider population. A producer of official statistics may consider that the disclosure of private information would be in the substantial public interest or would substantially benefit the personal safety or health of an individual, or their access to justice. If so, that recommendation should be made to the National Statistician/chief statistician and acted upon only with their authorisation.
47. Annex C contains the register of exemptions that lists a number of known and permanent exemptions to the general principles of confidentiality and statistical purposes only. The register of exemptions was associated with the former *National Statistics Code of Practice* and these will be carried over.

Principle 5, Practice 6: In every case where confidential statistical records are exchanged for statistical purposes with a third party, prepare written confidentiality protection agreements covering the requirements under this Code. Keep an operational record to detail the manner and purpose of the processing.

Most relevant to:

- officials responsible for data access/sharing arrangements.

48. This practice statement suggests two levels of documentation. First, it suggests there should be an overarching agreement that outlines the services and data to be exchanged, and the purposes and standards for that use of the private information. Second, perhaps appended to the confidentiality protection agreement, there should be an operational record to detail each instance of transfer to the third party to achieve completeness of audit. Compliance with data protection law, and/or the *Government Security Policy Framework*, may already require this documentation. The Data Handling Review minimum mandatory requirements oblige all information asset owners to maintain risk assurance when confidential statistical records are provided to third parties. The Review requires that a set of documents is maintained to set out how risk assurance is to be delivered when protectively marked data is shared.
49. It is inevitable that transfer of data to third parties introduces some degree of risk. One purpose of the documentation is to describe how that risk will be managed. Failure to properly exploit the potential of information is also a risk, so a further purpose of the documentation should be to record the public good arising from the shared use of the data.
50. Research access to data is an important feature of a statistical system. In the case of the Office for National Statistics (ONS), this is expressed in the *Statistics and Registration Service Act 2007* which says research access should be promoted and assisted, including by providing access to private information should that be necessary and proportionate to the research proposal. As guidance to this part of the Code, organisations are advised that confidentiality protection agreements and operational records should capture the suitability of the researcher; the research project; and the organisational and technical environment in which the access will take place (safe person, safe project, safe place).
51. It is good practice to publish the criteria by which access to data for research purposes may be granted. The ONS *Approved Researcher* criteria is an example¹⁶.

16 www.ons.gov.uk/about/who-we-are/our-services/unpublished-data/access-to-ons-data-service/index.html

Annex A

Declaration of Confidentiality in Official Statistics

‘Private information about individual persons (including bodies corporate) compiled in the production of official statistics is confidential, and should be used for statistical purposes only.’

I have read the above Principle and the confidentiality practice statements in the *Code of Practice for Official Statistics*.

I will seek the advice of Government Statistical Service colleagues or the guidance of my Head of Profession for Statistics (or the equivalent lead official) if I am unclear about how to apply this principle in my work.

Where there is doubt about the scope of this Declaration in my work I will seek clarity in writing from my Head of Profession (or the equivalent lead official).

In particular, I will ensure:

- official statistics do not reveal private information about individuals
- private information for official statistics is used for statistical purposes only
- private information for official statistics is kept secure
- private information for official statistics is shared only according to written agreements
- confidentiality is maintained

I consider myself to be sufficiently well trained to uphold the confidentiality principle in my work. I acknowledge that I do not have the authority to breach these obligations other than with the specific and written instruction of my Head of Profession (or equivalent).

I am _____ Copy to Head of Profession

Signature _____ Name _____

Name _____ [HoP contact details]

Date _____

Annex B

Declaration of Confidentiality in Official Statistics [Third-party staff]

'Private information about individual persons (including bodies corporate) compiled in the production of official statistics is confidential, and should be used for statistical purposes only.'

I have read the above Principle and the confidentiality practice statements in the *Code of Practice for Official Statistics*.

I will seek advice from the sources named in the Confidentiality Protection Agreement if I am unclear about how to apply this principle in my work.

Where there is doubt about the scope of this Declaration in my work, I will seek clarity in writing from the signatory to the Confidentiality Protection Agreement.

In particular, I will ensure:

- official statistics do not reveal private information about individuals
- private information for official statistics is used for statistical purposes only
- private information for official statistics is kept secure
- private information for official statistics is shared only according to written agreements
- confidentiality is maintained

I consider myself to be sufficiently well trained to uphold the confidentiality principle in my work. I acknowledge that I do not have the authority to breach these obligations.

I am _____ Copy to signatory to the
Confidentiality Protection
Agreement

Signature _____ Name _____

Name _____ [contact details]

Date _____

Annex C

Register of Exemptions

- i. Under a Ministerial Direction or a notice from the Chancellor of the Exchequer, as delegated to the UK Statistics Authority, information collected by the Office for National Statistics (ONS) under the Statistics of Trade Act may be disclosed for use by the government department or local authority authorised by, and for purposes specified in, that direction or notice.
- ii. Confidential commercial information may be disclosed under the provisions of the founding legislation of specific bodies or agencies, such as the Environment Agency.
- iii. Certain information may be disclosed to local planning authorities within the meaning of the Town and Country Planning Acts.
- iv. Administrative data held by ONS on the Inter-departmental Business Register (IDBR), and which has not been verified under the Statistics of Trade Act, may be disclosed to any government department for the conduct of statistical surveys. Information held by ONS on the IDBR which has been verified under the Statistics of Trade Act is subject to the provisions in paragraph (i) of this annex. Certain information from the IDBR can also be made available to certain non-departmental bodies with statutory functions. Details may be obtained from ONS Legal Services (Office for National Statistics, Segensworth Road, Titchfield, Fareham, PO15 5RR).
- v. Commercial information may be used in criminal proceedings for any offence under the Statistics of Trade Act, or for a report of proceedings.
- vi. In the case of overseas trade statistics, UK and European legislation and convention permit 'passive confidentiality' to be applied.

- vii. Census returns less than 100 years old are closed to the public. The National Archive, following the introduction of the Freedom of Information Act in January 2005, now consider applications for the partial disclosure of personal information from the 1911 Census.
- viii. Disclosure of personal information collected in the census may be permitted in court in the case of prosecutions under the terms of the *Statistics and Registration Service Act 2007*.
- ix. Her Majesty's Revenue and Customs (HMRC) provides some government departments with limited international trade information relating to energy, including details about traders.
- x. The Agriculture Statistics Act allows the disclosure of information collected under that act to government departments, planning and development authorities, the Food Standards Agency, some EU institutions (under section 12 of the *European Communities Act 1972*), for criminal proceedings or where the Secretary of State believes it is in the public interest.
- xi. Information relating to an individual may be given up to that individual, through a subject access request made under the terms of the *Data Protection Act 1998*.
- xii. Since 2005, under the Environmental Information Regulations, public bodies have been obliged, on request, to release information on emissions, and other information where there is no good reason not to.

