

Sensitivity Appraisal Framework

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## Purpose

This framework defines how the National Library of Scotland appraises collection materials for the identification and management of sensitive information. The framework applies to all forms and formats of collection material. The framework applies to any form of sensitive information, including information related to living persons and business information.

## Context

This framework relates to the following policies, regulations, and standards that inform the Library's obligations and objectives:

1. Data Protection Policy 2018, in particular section 21
2. UK General Data Protection Regulation 2016
3. Data Protection Act 2018
4. Data Protection, Privacy, and Sensitivity – An Assessment of the National Library of Scotland's Collections, 2019
5. National Library of Scotland Act 2012
6. Freedom of Information (Scotland) Act 2002 (see Appendix 2: Freedom of Information)
7. International Council on Archives Code of Ethics, 1996, in particular principle 7
8. Archives and Records Association UK and Ireland Code of Ethics, in particular principle 26

## Definitions

**Adult Content** means material containing strong images and / or language of a sexual nature, organised, published, or produced for the primary purpose of sexual arousal or stimulation.[[1]](#footnote-2)

**Collection Material** means a work, in any format, held or intended to be held by the Library as part of the Library's collections managed in accordance with the National Library of Scotland Act 2012.

**Confidential Business Information** means information of, or pertaining to, a business, organisation, entity, or non-natural person, which:

1. is Confidential Information (implicitly or explicitly),
2. pertains to measures or decisions not yet announced or enacted, or
3. would be likely, if collected, stored, used, or disclosed in a particular manner, to disadvantage that entity's position in negotiations, commercial activities, or business functions.[[2]](#footnote-3)

**Confidential Information** means information known (or likely to be known) only to a defined or limited set of persons and not generally or readily knowable by lawful means to persons outside that defined group.

**Culturally Sensitive Information** means information that, in contemporary Scottish or British society, may cause offence, discomfort, or dislike to persons, or categories of persons, due to the information's content, form, character, or context. Such information may, for example, be conveyed through language not (or no longer) normally considered socially acceptable, imagery of a graphic or explicit nature, or strong opinions or reports expressed in direct or crude terms.

**Data of Concern** means any information that constitutes one or more of: Adult Content, Confidential Business Information, Confidential Information, Distressing or Harmful Content, Embargoed Information, Obscene Information, Personal Data, Private Information, Sensitive Information, Culturally Sensitive Information, or Special Category Personal Data, regardless as to whether any of the information is Sensitive Information.

**Distressing or Harmful Content** means material that may cause distress or harm to a person who sees or uses it. It is not possible to identify all potential sources of distress or harm for any individual. Content may be considered potentially distressful or harmful under this framework if it contains material from one or more of the following sub-categories:[[3]](#footnote-4)

1. Graphic depictions or descriptions of violence, including sexual violence, animal cruelty, torture, or genocide
2. Disturbing content that may frighten, disgust, or scare, such as graphic medical imagery or threatening or horrifying material
3. Substance abuse, such as drug or alcohol misuse
4. Mental health-related matters, such as content relating to self-harm or suicide or material that graphically or distressingly conveys matters such as panic attacks or anxiety-inducing material (such as spiders, needles, etc)
5. Graphic depictions or descriptions of death and dying, accidents, or serious injury
6. Content depicting or relating to abuse, including child abuse, emotional abuse, sexual abuse, or neglect
7. Flashing or strobing lights

**Embargo** means an order to temporarily stop something, including the giving of information.[[4]](#footnote-5) An embargo must be issued by a competent authority, such as a court, or the owner of the information or intellectual property in question (although such a self-embargo cannot apply after a work has already been lawfully published or communicated to the public).

**Embargoed Information** means information subject to an Embargo.

**Legally Restricted Information** means information, other than Data of Concern, subject to a restriction specified in law that serves to limit one or more forms of use (for example prevents lawful collection of the material or lawful making available of the material). See the Appendix for more information on Legally Restricted Information, which is beyond the scope of this framework.

**Obscene Information** means a work if its effect or (where the work comprises two or more distinct items) the effect of any one of its items is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.[[5]](#footnote-6) To *deprave* means to make morally bad, to pervert, to debase, or to corrupt morally and to *corrupt* means to render morally unsound or rotten, to destroy the moral purity or chastity, to pervert or ruin good quality, to debase, to defile.[[6]](#footnote-7)

**Personal Data** means any information relating to an identified or identifiable natural (living) person.[[7]](#footnote-8)

**Private Information** means information of a personal nature known (or likely to be known) only to a single person or to a small group of persons, such as the members of an immediate family, and not generally or readily knowable by lawful means to persons outside that defined or closed group.

**Sensitive Information** means information that would, or would be likely, to cause Substantial Damage or Distress to one or more persons if collected, stored, used or disclosed in a particular manner.[[8]](#footnote-9)
*See section 7 for more detail.*

**Special Category Personal Data** means Personal Data that reveals racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, as well as genetic data, biometric data (when processed for the purpose of uniquely identifying an individual person), data concerning health or data concerning an individual person's sex life or sexual orientation.[[9]](#footnote-10)

**Substantial Damage or Distress** means financial loss, physical harm, or a level of upset, emotional or mental pain, that goes beyond annoyance, irritation, strong dislike, or a feeling that the processing is morally abhorrent.[[10]](#footnote-11) [[11]](#footnote-12)

Principles relating to the definitions:

Avoid assumptions. For example:

1. ‘Personal Data' is defined broadly. A large amount of information will constitute Personal Data. However, not all Personal Data is Sensitive Information, Confidential Information, or Private Information.
2. Not all Confidential Information is Sensitive Information.

Special Category Personal Data is a sub-set of Personal Data: all Special Category Personal Data is Personal Data (although the opposite is not true).

Unless otherwise specified, ‘person' refers to a natural, living person; a human being who is or is likely to be alive (see also section 7).

The definitions of Obscene Information, Personal Data, and Special Category Personal Data derive from law (legislation or case law). Other definitions derive from guidelines, common usage, or standard dictionary definitions.

## When to use this framework

It may be useful to assess Collection Materials under these procedures when:

1. Being considered for acceptance into the collection by means of donation, deposit, gift, bequest, transfer, or purchase.
	* 1. Assessment at this stage may not always be practical or necessary. For example, legal deposit intake should not as a matter of routine be assessed at this stage.
		2. Unpublished Collection Materials and older Collection Materials (for example items first published more than 10 years before first collection) should normally be assessed under this Framework at this stage.
2. Being considered for remote or off-site access (for example through digitisation), if not already assessed under (i).
3. Collection Material has been requested for access, but is flagged as potentially sensitive under past procedures (for example Collection Materials that have a ‘Data protection principles apply' sticker).

Published works may contain Data of Concern or Sensitive Information. However, this information has already been made available by publication. The collection, preservation, and making available of such works by the Library will not serve to process or disseminate such information in a manner inconsistent with or excessive to the prior act of publication, other than in exceptional circumstances (for example a work known to have been of a highly limited circulation that the Library seeks to make widely and openly accessible, for example via online access to digitisations).

However, published works may contain Data of Concern, such as Culturally Sensitive Information, for example, which could be harmful to users of the material. These factors should be taken into account when considering whether assessment under this Framework is prudent.

## Level of assessment

The assessment procedures under section 8 can be followed in relation a single item or several items together (for example assessment at collection level). The level of assessment should be determined by the nature and context of the need for assessment. Factors to take into account when determining the level of assessment:

The **uniformity** of the collection – are the works that make up the collection largely similar (for example by the same creator, of the same type) or largely unique and diverse from one another? The greater the diversity of the material, the more likely it is that an item-level assessment will be required.

The **size** of the collection – very large or complex collections may, for practical reasons, be challenging to subject to item-level assessment. In such cases, a sampling approach may be used, as detailed below.

The **currency** of the material – more contemporary material is more likely to contain Data of Concern – collections of very recent archival materials may be easier to assess at a collection-level if there is a strong likelihood of a large amount of Data of Concern throughout the works.

The **notoriety** of persons or subjects – works that relate to well-known or (in)famous persons or subjects are likely to garner wider and faster attention than other works. Therefore, such works may be more suited to a finer lever of assessment under this policy.

### Sampling

It is not always necessary to assess the full extent of an item or collection. It may often be suitable to assess only a sample of a full item or collection when using this framework. No single sampling technique or approach is mandated under this framework. You should apply the following guidelines when considering whether to assess a sample and how to develop your assessment sample:

The factors above – uniformity, size, currency, and notoriety – will impact the use of sampling. A more uniform collection or a larger collection will normally justify sampling, while a more current collection or material pertaining to a more notable person, event, etc. may justify a more thorough assessment with less sampling.

You should also consider other factors that may increase or reduce the justification for sampling, such as how familiar you are already with the material, the availability of reliable guidance or metadata about the content that may explain its contents more quickly, etc.

Consider the types of material that you are assessing and how this may impact the presence of Data of Concern.

1. For example, if there are items that, by their nature, are likely to contain Data of Concern (for example, recent financial records of a business) you should assess those items. If they are uniform in nature (for example, if there is a single collection containing hundreds of recent financial records from different businesses), you can apply sampling to your assessment, whereby you do not assess each, or most, items.
2. For example, if there are items that, by their nature, are not likely to contain Data of Concern (for example, published, mass market or well-known works) you may only need to assess these items at a very high and selective level

If you're assessing a collection or range of materials, and there are different types of materials (for example, some published books, some personal letters, some ledgers, some postcards, etc.), you should consider the types of materials and whether assessment should be agnostic as to the format (ie there's no need to consider the format, the likelihood of Data of Concern being present will not vary between formats) or should react to format, with assessments conducted of items falling into specific format categories (ie there's a likelihood that some of the formats will contain more or different types of Data of Concern).

You can consider different methods of sampling, as and when you've determined that sampling may be needed. Applicable methods may include:

1. Simple random sampling: use a random number generator to identify which items in your collection to assess. You'll need to establish first how many items you want to assess from the total.
2. Systematic sampling: assessing every Nth item in the collection (or page in the item). The value of N will be determined by the factors above (size, uniformity, etc), but, for example, if you were to assess 1/8th of material, the value of N would be 8. You can choose whether to start the sampling on page or item 1, followed by 8, 16, etc. or whether to use a random number generator to select a starting number between 1 and N.

In considering the assessment level and any use of sampling, remember that it is impossible to remove all risk or uncertainty. It is not prudent to check or assess every item in complete detail, nor is it responsible to fail to assess any of our collections. There is a need to strike a balance. Due to the variations in our collections (in terms of size, format, type, subject, currency, etc) it is not feasible or helpful to have a single matrix for establishing the precise amount of material to assess in every case. Using best judgement based on the points set out here, risk will be sufficiently reduced. Assessment will not capture every instance of sensitivity, nor can it aim to do so, and that is OK. It's also important to be mindful that the nature of sensitivities will change over time.

## Collection sensitivity status

The following collection sensitivity statuses apply to our collections:

|  |  |
| --- | --- |
| **NOT ASSESSED** | Not assessed under this Framework. |
| **OPEN** | Available for staff and public access without restriction. |
| **OPEN WITH ADVISORY** | Available for staff and public access accompanied by a warning or statement regarding the nature of the material (see section 9). |
| **RESTRICTED** | Available for public access subject to approval by a relevant curator, collection area head, or Director. Available for staff access in the same manner as for public access or on a strictly need-to-access basis (for example to carry out emergency conservation work).  |
| **CLOSED** | Not available for public access. Available for staff access only on a strictly need-to-access basis (for example to carry out emergency conservation work) with approval of a Director or the National Librarian. |

Collection sensitivity statuses relate only to Data of Concern or Legally Restricted Information – these statuses do not relate to other factors that may impact collection access and use, such as intellectual property rights, material ownership, or material condition. See section 9 for information on how to communicate the sensitivity status after you have completed your assessment.

## Understanding what “Sensitive Information” means in this context

This section provides a more detailed exploration of the term ‘Sensitive Information'.

Sensitive Information is information that would, or would be **likely**, to **cause** **Substantial** **Damage** or **Distress** to one or more **persons** if collected, stored, used or disclosed in a particular manner.

**Likely** means such as well might happen or be true; probable; if something is likely, it will probably happen or is expected.

Determining likelihood is partly about assessing risk: if a result is definite (ie will happen) there is no risk, thus no issue of likelihood, because the outcome is assured. Conversely, where there is a chance that something either will or will not happen, there is a risk that a particular outcome (for example substantial damage) will result, but this outcome is not certain and an alternative outcome is possible. The test, therefore, is not to determine if there is a possibility of a particular outcome, but rather to determine if a possible outcome is likely, which must be considered in line with the definitions provided here (for example is one outcome more probable than others, is one outcome expected in contrast to others?).

**Cause** means to make something happen. The test here is to consider the link between the information (or the way in which the information is to be collected, stored, made available, etc.) and the outcome (for example any substantial damage).

**Substantial** qualifies the terms ‘damage' and ‘distress', meaning that ‘damage' or ‘distress' alone are not the matters of concern: what is of interest is damage that is substantial or distress that is substantial.

‘Substantial' means of considerable importance, size, or worth. Accordingly, substantiality can be measured in terms of intensity (for example the severity of an outcome), scale (for example the number of persons affected by an outcome), or value (for example the sum lost by an outcome).

**Damage** means financial loss or physical harm. Damage is quantifiable (ie can be measured).

**Distress** means extreme anxiety, sorrow, or pain. Substantial Distress more specifically means a level of upset, emotional or mental pain, that goes beyond annoyance, irritation, strong dislike, or a feeling that the relevant activity (for example collecting, preserving, making available information, or accessing information that's been made available) is morally abhorrent. When considering substantiality in relation to distress, you should additionally consider the exploration of ‘substantial' above.

**Person** means a living human being.

In considering whether information would be likely to cause substantial damage or distress, you should take account of the Library's risk framework:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **IMPACT** | **Limited (1)** | **Minor (2)** | **Moderate (3)** | **Major (4)** | **Severe (5)** |
| **LIKELIHOOD** |
| **Almost Certain (5)** | Moderate (5) | High (10) | High (15) | Critical (20) | Critical (25) |
| **Likely (4)** | Low (4) | Moderate (8) | High (12) | High (16) | Critical (20) |
| **Moderate Chance (3)** | Low (3) | Moderate (6) | Moderate (9) | High (12) | High (15) |
| **Minor Chance (2)** | Low (2) | Low (4) | Moderate (6) | Moderate (8) | High (10) |
| **Very Low (1)** | Low (1) | Low (2) | Low (3) | Low (4) | Moderate (5) |

When undertaking an assessment under this framework, make reference to the risk framework (above) in terms of likelihood (vertical axis) and impact (horizontal axis). Make this assessment with the points above in mind, for example that causation is a key factor.

## Assessment procedure

A note on Legally Restricted Information - Legally Restricted Information is not within scope of this framework. If you are concerned that material may contain Legally Restricted Information you should raise this with you manager, the relevant collection area head, or the Director of Collections, Access, and Research. Limited guidance on legally Restricted Information is provided in the Appendix.

This is the procedure to follow in conducting a sensitivity assessment.

### Overview

1. Sampling, if used
2. Identify Data of Concern: working through each data type one-by-one, use the following framework to identify the appropriate sensitivity classification for each data type. Identify one classification for each type, don't jump to assessing only one type.
3. Identify the most restrictive classification you've selected through this process – this will be the classification applied to the Collection Material. For example, if the Collection Material is subject to an Embargo (classification: Closed) and is otherwise classified as Open under the other data types, the Collection Material is classified as Closed.
4. Record and communicate the sensitivity status using the sensitivity statements set out in section 9.

### Procedure

This section describes each data type in sequence and what constitutes Open, Open with Advisory, Restricted, or Closed status under each type. It is not possible to reach certain statuses in a few cases, for example, there is no ‘Open with Advisory' or ‘Restricted' status for an embargo, as an embargo wither exists (‘Closed') or does not (‘Open').

**Adult Content**

1. No Adult Content: class as ‘**Open'**
2. A limited extent of mild Adult Content within a wider work or item that does not contain any Adult Content; or presence of content that would otherwise be Adult Content, but where this is presented for other purposes, for example scholarly discourse: ‘**Open with Advisory**'
3. Presence or likely presence of Adult Content exceeding the ‘Open with Advisory' threshold: ‘**Restricted'**
4. Adult Content is not classed as ‘Closed', however, see guidance in the Appendix on related legal restrictions (for example, extreme pornography), which should be handled separately.

**Confidential Business Information**

1. No Business Confidential Information: classed as ‘**Open'**
2. Content that may be Business Confidential Information, where confidentiality is not likely, but where there is no reasonable means to confirm that the information is not confidential: classed as ‘**Open with Advisory**'
3. Definite presence of Business Confidential Information exceeding the ‘Open with Advisory' threshold OR presence of Business Confidential Information likely to cause substantial damage or distress if made available for consultation or other routine use, including through onward use of the information by a member of the public accessing the material: classed as ‘**Restricted'**
4. Definite presence of significant amounts of Business Confidential Information that will cause substantial damage or distress if made available for consultation in any form: classed as ‘**Closed'**

**Confidential Information**

1. No Confidential Information: classed as ‘**Open**'
2. Content that may be Confidential Information, where confidentiality is not likely, but where there is no reasonable means to confirm that the information is not confidential: classed as ‘**Open with Advisory**'
3. Presence of Confidential Information exceeding the ‘Open with Advisory' threshold, but not meeting the ‘Closed' threshold: classed as ‘**Restricted'**
4. Definite presence of significant amounts of Confidential Information OR presence of Confidential Information likely to cause substantial damage or distress if made available for consultation or other routine use, including through onward use of the information by a member of the public accessing the material: classed as ‘**Closed'**

**Culturally Sensitive Information**

1. No Culturally Sensitive Information: classed as ‘**Open'**
2. Presence or likely presence of Culturally Sensitive Information not meeting the ‘Restricted' threshold: classed as ‘**Open with Advisory**'
3. Presence or likely presence of Culturally Sensitive Information that in the form provided would be likely to cause substantial damage or distress to persons who access it or otherwise become aware of it (whether said persons may derive from across society or from one or more discrete sections of society, of any size) and where this impact cannot reasonably be reduced below a ‘substantial' level by some positive action, such as the provision of contextual interpretation: classed as ‘**Restricted'**
4. NB Give details as to nature of the Culturally Sensitive Information within material that has been assessed as Open with Advisory or Restricted. The Library is currently preparing a defined list of sub-categories that can be used for this purpose and included in the statements outlined at sections 3(b) and 4(b) of part 9 of this Framework.

**Distressing or Harmful Content**

1. No Distressing or Harmful Content: classed as ‘**Open'**
2. Presence of Distressing or Harmful Content: classed as ‘**Open with Advisory**'
3. NB Give details as to nature of the Distressing or Harmful Content within material that has been assessed as Open with Advisory. See section 3(b) of part 9 of this Framework for details.

**Embargoed Information**

1. No known Embargo: class as ‘**Open'**
2. Presence or likely presence of an Embargo: class as ‘**Closed'**

**Obscene Information**

1. No Obscene Information: class as ‘**Open'**
2. Content that meets the technical definition of Obscene Information, but which does so only in a limited manner (for example, only if an individual is able to piece together several pieces of disparate information) or which would be unlikely to be considered in contemporary Scottish society to be obscene: class as ‘**Open with Advisory**'
3. Presence or likely presence of Obscene Information exceeding the ‘Open with Advisory' threshold, but not meeting the ‘Closed' threshold: class as ‘**Restricted'**
4. Likely presence of significant amounts of Obscene Information OR presence of Obscene Information of a high likelihood to corrupt or deprave a large and varied number of persons: class as: ‘**Closed'**

**Personal Data**

1. No Personal Data OR Basic Personal Data or Personal Data likely already to be in the public domain, such as names, discussion of persons' public lives OR Personal Data of an individual, where it is known that the individual does not object to the information being in the public domain without advisory (for example they publicised it themselves or endorsed it being made public): classed as ‘**Open'**
2. Some content is Personal Data that we cannot confirm has already been made public, but on the balance of probability the information has either already been made available to the public or is information that the individual would not object to being in the public domain: classed as ‘**Open with Advisory**'
3. Definite presence of Personal Data exceeding the ‘Open with Advisory' threshold OR presence of Personal Data likely to cause substantial damage or distress if made available for consultation or other routine use, including through onward use of the information by a member of the public accessing the material: classed as ‘**Restricted'**
4. Definite presence of Personal Data that will cause substantial damage or distress if made available for consultation in any form: classed as ‘**Closed'**

**Private Information**

1. No Private Information OR Private Information of an individual, where it is known or likely that the individual does not object to the information being in the public domain without advisory (for example they publicised it themselves or endorsed it being made public) OR Private Information of an individual who is known to be no longer living: classed as ‘**Open'**
2. Some content is or may be private in nature and there are no reasonable means to confirm that the information is not private, but on the balance of probability the information is either not private, is private but it is probable that the individual would not object to the information being in the public domain, or the information is private but likely relates to an individual who is no longer living: classed as ‘**Open with Advisory'**
3. Definite presence of Private Information exceeding the ‘Open with Advisory' threshold OR presence of Private Information likely to cause substantial damage or distress if made available for consultation or other routine use, including through onward use of the information by a member of the public accessing the material, but not where meeting the ‘Closed' threshold: classed as ‘**Restricted'**
4. Definite presence of significant amounts of Private Information that will cause substantial damage or distress if made available for consultation in any form: classed as ‘**Closed'**

**Special Category Personal Data**

1. Special Category Personal Data known already to be in the public domain, for example statement of fact that a Trade Union leader is a member of a Trade Union. Special Category Personal Data of an individual, where it is known that the individual does not object to the information being in the public domain without advisory (for example they publicised it themselves or endorsed it being made public): classed as ‘**Open'**
2. Special Category Personal Data likely, on the balance of probability, already to be in the public domain, but where this is not known for certain: classed as ‘**Open with Advisory**'
3. Special Category Personal Data known to not already be in the public domain, or expected, on the balance of probability, not to be in the public domain, where the overall presence of Special Category Personal Data within the material is limited and does not form a major part of the overall material: classed as ‘**Restricted'**
4. Special Category Personal Data known to not already be in the public domain, or expected, on the balance of probability, not to be in the public domain, in all other cases: classed as ‘**Closed'**

## Sensitivity statements

This section outlines how a sensitivity statement should be applied to Collection Material. Use this section to apply the correct statement after completing an assessment, or where an assessment has not (yet) been completed. These statements should be added to metadata of the Collection Material and/or published alongside (copies of) the Collection Material when made available by the Library, for example online.

**Collection Material that has not been assessed under this framework**

1. This material has not been assessed for sensitive or distressing content. Take care with this material, as there may be sensitive or distressing content.

**Collection Material that has been assessed as ‘Open' under every data type**

1. This material is unlikely to contain sensitive or distressing content. Take care with this material, as there may be content that some would consider sensitive or distressing.

**Collection Material that has been assessed as ‘Open with advisory' under one or more data type(s) and has not been given any ‘Restricted' or ‘Closed' statuses**

1. Advisory: This material contains [data type(s)]. Take care with this material.
	1. Example: Advisory: This material contains personal data. Take care with this material.
	2. Example: Advisory: This material contains adult content, private information, and personal data. Take care with this material.

In the case of material that has been assessed as ‘Open with advisory' for the presence of Culturally Sensitive Information and/or Distressing or Harmful Content, more specific information on the nature of this content should be provided in the statement, in the form:

1. Advisory: This material contains [data type(s)], in particular [details]. Take care with this material.
	1. Example: Advisory: This material contains culturally sensitive information, in particular racist language. Take care with this material.
	2. Example: Advisory: This material contains distressing or harmful content, in particular depictions of suicide. Take care with this material.

**Collection Material that has been assessed as ‘Restricted' under one or more data type(s) and has not been given any ‘Closed' statuses**

1. Restricted: This material contains [data type(s)]. Public and staff access requires prior approval of a relevant curator, collection area head, or Director.
	1. Example: Restricted: This material contains confidential business information. Public and staff access requires prior approval of a relevant curator, collection area head, or Director.
	2. Example: Restricted: This material contains obscene information, personal data, and special category personal data. Public and staff access requires prior approval of a relevant curator, collection area head, or Director.

In the case of material that has been assessed as ‘Restricted' for the presence of **Culturally Sensitive Information**, more specific information on the nature of this content should be provided in the statement, in the form:

1. Restricted: This material contains culturally sensitive information, in particular [details]. Public and staff access requires prior approval of a relevant curator, collection area head, or Director.
	1. Example: Restricted: This material contains culturally sensitive information, in particular extensive and graphic racist imagery. Public and staff access requires prior approval of a relevant curator, collection area head, or Director.

**Collection Material that has been assessed as ‘Closed' under one or more data type(s)**

1. Closed: This material contains [data type(s)]. This material is not available for public access. Staff access is permitted only on a strictly need-to-access basis with approval of a Director or the National Librarian.
	1. Example: Closed: This material contains content subject to an embargo. This material is not available for public access. Staff access is permitted only on a strictly need-to-access basis with approval of a Director or the National Librarian.
	2. Example: Closed: This material contains confidential information and obscene information. This material is not available for public access. Staff access is permitted only on a strictly need-to-access basis with approval of a Director or the National Librarian.

## Responsibilities

Sensitivity assessments should be carried out by relevant curators or collection area heads. The person carrying out the assessment is responsible for recording the resulting statement, after approval, in the suitable location (which may be the relevant collection management system, catalogue, etc.), or ensuring that the statement is recorded by others.

Collection area heads are responsible for approving sensitivity assessments.

Specialist staff across the Library are responsible for providing relevant advice and support on the conduct of sensitivity assessments (for example, concerning persona data, business information, or culturally sensitive information)

The Rights and Information Manager is responsible for maintaining this framework.

The Director of Collections, Access, and Research is responsible for approving this framework and working with peers, in particular the Directors of Collections Management and of Digitial and Service Transformation, to ensure sensitivity assessments can be properly conducted and sensitivity statements properly applied to material.

## Appendix 1: Legally Restricted Information

This appendix provides further guidance on Legally Restricted Information. Legally Restricted Information is beyond the scope of this framework. If you are concerned that material may contain Legally Restricted Information, speak with your manager or the Director of Collections, Access, and Research.

**This guidance is not exhaustive and is not legal advice.**

The following guidance is derived from guidance prepared in 2016 for the opening of the Kelvin Hall visitor centre ([AssessmentControversialMovingImagesKH20160607V03.docx](https://natlibscotland.sharepoint.com/%3Aw%3A/s/llt/EYmwfGidCytNhPtRUDXt1DMBKWcFCLbDv0AQY7VHJSkjjQ?e=qXflUU)). Therefore, this guidance has a particular focus toward legal restrictions that affect moving image material, although many of these restrictions apply to other forms of material (as noted).

The following legal restrictions apply:

1. **Animal cruelty**

Under [s.1 of the Cinematograph Films (Animals) Act 1937](https://www.legislation.gov.uk/ukpga/Edw8and1Geo6/1/59/section/1?view=extent), it is prohibited to exhibit or supply for exhibition a film if any scene in the film was organised or directed in such a way as to involve cruel infliction of pain or terror on an animal or cruel goading of an animal to fury.

Under the 1937 Act, ‘animal' in Scotland has the meaning given in [s.17 of the Animal Health and Welfare (Scotland) Act 2006](https://www.legislation.gov.uk/asp/2006/11/section/17): an animal commonly domesticated in the British Islands, under the control of man, or not living in the wild.

1. **Animal fights**

Under [s.23(4) of the Animal Health and Welfare (Scotland) Act 2006](https://www.legislation.gov.uk/asp/2006/11/section/23), it is an offence to show, publish, supply, or possess with the intention of supply to others a recording of an animal fight that took place in Great Britain since 2007.

Under the 2006 Act, ‘animal' in Scotland has the meaning given in [s.17 of the Animal Health and Welfare (Scotland) Act 2006](https://www.legislation.gov.uk/asp/2006/11/section/17): an animal commonly domesticated in the British Islands, under the control of man, or not living in the wild.

1. **Extreme pornographic material**

Possession of extreme pornographic images (including moving images) is an offence under [s.51A of the Civic Government (Scotland) Act 1982](https://www.legislation.gov.uk/ukpga/1982/45/section/51A).

An image is covered by this section if it is obscene, pornographic, and extreme.

The test for being obscene is the same as for Obscene Material.

An image is pornographic if it is ‘of such a nature that it must reasonably be assumed to have been made solely or principally for the purpose of sexual arousal' (1982 Act, s.51A(3)).

An image is extreme if it depicts in an explicit and realistic way ‘(a) an act which takes or threatens a person's life, (b) an act which results, or is likely to result, in a person's severe injury, (c) rape or other non-consensual penetrative sexual activity, (d) sexual activity involving (directly or indirectly) a human corpse, (e) an act which involves sexual activity between a person and an animal (or the carcase of an animal)' (1982 Act, s.51A(6)).

1. **Indecent images of children**

Distributing or showing, or possessing with the intention to distribute or show, indecent photographs or pseudo-photographs of children is an offence under [s.52 of the Civic Government (Scotland) Act 1982](https://www.legislation.gov.uk/ukpga/1982/45/section/52).

Under the 1982 Act, a child is a person under age 18 and a ‘photograph' includes a film.

The 1982 Act does not define ‘indecent'. In England and Wales, the understanding of indecent is based in part on five levels of seriousness defined in the case R V Oliver, Hartrey and Baldwin (2002). This scale has been adopted by the Sentencing Council (England and Wales). [Home Office internal guidance](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/468768/Indecent_and_obscene_materials_v_1_0.pdf) (published publicly) advises that one ‘must apply the standard of decency which ordinary right thinking members of the public would set' and notes that R V Stamford (1972) found that ‘recognised standards of propriety are objective and that the character of the owner or the addressee is immaterial'.

1. **Indecent matter publicly displayed**

It is an offence to publicly display any indecent matter under [s.1 of the Indecent Displays (Control) Act 1981](https://www.legislation.gov.uk/ukpga/1981/42?view=extent).

This section does not apply to any matter: in a television broadcast or programme; displayed in an art gallery or museum and only visible within the gallery or museum; displayed by authority of and only visible within a building occupied by the Crown or a local authority; included in the performance of a play; or included in a screening of a film in a licensed cinema, a private-dwelling, a premises used occasionally, a screening in a moveable building, or a screening by a non-commercial body as certified by the Secretary of State under s.6(6) of the Cinemas Act 1985.

This section does not include display of the human body, or parts thereof.

1. **Material with an R18 BBFC classification**

Films [classified R18](http://www.bbfc.co.uk/what-classification/r18) may only be screened in specifically-licensed premises.

1. **Racial hatred**

Under [s.19 of the Public Order Act 1986](https://www.legislation.gov.uk/ukpga/1986/64/section/19), it is an offense to publish or distribute written material which is threatening, abusive, or insulting if the intention is to stir up racial hatred or having regard to all the circumstances racial hatred is likely to be stirred up.

Under [s.21 of the Public Order Act 1986](https://www.legislation.gov.uk/ukpga/1986/64/section/21), it is an offence to distribute, show, or play a recording which is threatening, abusive, or insulting if the intention is to stir up racial hatred or having regard to all the circumstances racial hatred is likely to be stirred up.

1. **Terrorist material**

It is an offence under [s. 2 of the Terrorism Act 2006](https://www.legislation.gov.uk/ukpga/2006/11/section/2) to distribute, circulate, give, sell, lend, electronically transmit, provide a service enabling others to obtain, read, listen or look at, or to possess with the intention of undertaking any such actions a ‘terrorist publication', if, at the time of such action, (a) the person intends their conduct to be a direct or indirect encouragement or inducement to the commission, preparation, or instigation of acts of terrorism, (b) intends an effect of their conduct to be the provision of assistance in the commission or preparation of such acts, or (c) is reckless as to whether their conduct as effect of either (a) or (b).

Under s.2(3) of the 2006 Act, an item is a ‘terrorist publication' if matter in it is likely ‘(a) to be understood, by some or all of the persons to whom it is or may become available as a consequence of that conduct, as a direct or indirect encouragement or other inducement to them to the commission, preparation or instigation of acts of terrorism; or (b) to be useful in the commission or preparation of such acts and to be understood, by some or all of those persons, as contained in the publication, or made available to them, wholly or mainly for the purpose of being so useful to them'.

## Appendix 2: Freedom of Information

The Library is subject to the Freedom of Information (Scotland) Act 2002 (the Act). Collection Materials, except some deposits, are within scope of the Act. Requests to access or receive information from Collection Materials are generally requests under the Act. However, normally these requests are not handled as formal FOI requests. They are routine requests in line with our core business and therefore, in line with the Scottish Ministers Code of Practice on the discharge of functions under FOI law (para 9.13), we handle them as business-as-usual requests. This includes, for example, requests for information from Collection Materials and requests to consult Collection Materials in reading and access spaces.

Under the Act, members of the public have a general right to access information held by public authorities such as the Library. This general right is limited by some exceptions, which are set out in the Act. If information is requested and the public authority that holds it finds that it is exempt from disclosure under an exception, the authority is generally not obliged to provide the information. Each exception has parameters that must be considered on a case-by-case basis. In addition, not all exceptions are automatic. Many of the exceptions are subject to the public interest test. This test requires that, once a public authority has determined that the information requested is subject to an exception, the body must consider whether the public interest lies in upholding that exception or not. The Rights and Information Manager is responsible for handling formal requests under the Act and coordinating considerations of exceptions.

Under this Framework, the Library may deny access to Collection Material in a very limited number of cases. This would only be the case where Collection Material has been assessed and given a ‘Closed' status. ‘Closed' status is only possible in relation to:

* Confidential Business Information;
* Confidential Information;
* Embargoed Information;
* Obscene Information;
* Personal Data;
* Private Information; or
* Special Category Personal Data.

If the Library has applied a ‘Closed' status to Collection Material and a request to access that material is subsequently made, the request should be treated as a formal request under the Act. This is because we are likely to withhold access. It will be necessary to examine the specifics of each request at the time of request. However, in general, it is likely that the following exceptions under the Act will apply:

|  |  |
| --- | --- |
| **Closure reason** | **Exception under the Act** |
| Confidential business information  | s.33 commercial interests and the economy  |
| Confidential information | s.36 confidentiality or s.38 personal information  |
| Embargoed information  | s.26 prohibitions on disclosure  |
| Obscene information | s.26 prohibitions on disclosure  |
| Personal data  | s.38 personal information  |
| Private information  | s.36 confidentiality or s.38 personal information  |
| Special category personal data  | s.38 personal information  |

## Document information

* Document name: Sensitivity Appraisal Framework
* Document status: Approved
* Contact: Rights and Information Manager
* Approval:
	+ Date of Library Leadership Team Approval: [date or not applicable]
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## Document control

| Date | Action |
| --- | --- |
| [e.g. 2021 10 25] | [Updates to sections 2 and 3 at scheduled annual review by the Rights and Information Manager and Information Officer] |

1. Derived from the definition given by Ofcom at Rule 1.18 of the Broadcasting Cide guidance, <https://www.ofcom.org.uk/__data/assets/pdf_file/0017/24704/section1.pdf> [↑](#footnote-ref-2)
2. <https://www.bodleian.ox.ac.uk/about/policies/information-security#B> [↑](#footnote-ref-3)
3. Derived from the list of categories set out in Charles A, Hare-Duke L, Nudds H, Franklin D, Llewellyn-Beardsley J, Rennick-Egglestone S, et al. (2022) Typology of content warnings and trigger warnings: Systematic review. PLoS ONE 17(5): e0266722. <https://doi.org/10.1371/journal.pone.0266722> (Table 1) [↑](#footnote-ref-4)
4. <https://dictionary.cambridge.org/dictionary/english/embargo> [↑](#footnote-ref-5)
5. S.1(1) Obscene Publications Act 1959 [↑](#footnote-ref-6)
6. *Penguin Books Ltd* [1961] Crim LR 176; <https://www.cps.gov.uk/legal-guidance/obscene-publications> [↑](#footnote-ref-7)
7. Article 4(1), General Data Protection Regulation 2016 [↑](#footnote-ref-8)
8. Derived from s.19(2) Data Protection Act 2018 [↑](#footnote-ref-9)
9. Article 9(1), General Data Protection Regulation 2016 [↑](#footnote-ref-10)
10. ICO, 2012, <https://ico.org.uk/media/about-the-ico/policies-and-procedures/1873/section_10_guidance_for_staff.pdf> [↑](#footnote-ref-11)
11. The National Archives, nd. <https://www.nationalarchives.gov.uk/archives-sector/legislation/archives-data-protection-law-uk/gdpr-faqs/> [↑](#footnote-ref-12)