

# A Practical Guide to the Freedom of Information Act 2000

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## The Importance of Freedom of Information

“I do not believe that the instinctive Whitehall reaction to seek to withhold Government documents from public inspection is likely to change.”<sup>1</sup> Sir Richard Scott.

“Public authorities should begin to plan the process of adapting to the requirements of the Act in order to ensure a smooth transition.”<sup>2</sup> Elizabeth France.

The Freedom of Information Act (FOIA), which became law on 30 November 2000, is intended to foster a culture of openness - making government more accountable and enhancing public participation in the democratic decision-making process. It opens the door to more informed public discussion and understanding of the process of government.

The Act establishes a right of public access to information and imposes obligations on public authorities to disclose information, subject to a range of exemptions. It will assume a central role in government’s dealings with the public, applying equally to matters of routine and controversy.

The public will expect public authorities:

- To know about FOI
- To follow the set procedures
- To be helpful in overcoming problems
- To disclose information.

## Who is this guide designed for?

This guide is designed primarily for officials in central government departments who may be involved in the handling of FOIA requests, but who are not FOIA specialists.

It is intended to offer a succinct and easy-to-use introduction to the FOIA and to be complementary to more detailed official advice which will be available from the Home Office and the Information Commissioner.

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<sup>1</sup> Report of the inquiry into the Export of Defence Equipment and Dual-Use Goods to Iraq and Related Prosecutions. London, 1995-96, HC115, vol. iv, para. K6.16

<sup>2</sup> 'Information Commissioner urges Public Authorities to start planning' News Release 30 Jan 2001.

It covers the essential information you need to know about the Act, and gives guidance on what you need to do in normal situations to apply it. It cannot, however, replace the need to take legal advice, as appropriate, on the proper application of the Act.

The guide will be revised and updated as more detailed information becomes available. If you spot any inaccuracies or omissions, please inform us so that we can correct the guide in later editions. **We would particularly welcome additional practical tips and examples of best practice.**

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## 1. Introduction

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The FOIA will replace the current Code of Practice on Access to Government Information, which has been in operation since 1994 (revised in 1997). The underlying principles are similar. Departments have been operating the code effectively for 6 years. Why then is the FOIA important and why is special attention and training needed?

There are four main reasons:

- The FOIA gives legal rights to applicants and imposes legal duties upon departments, as compared to the voluntary code where 'enforcement' had to involve an MP and the Ombudsman.
- Ministers have stressed repeatedly that they see it as a catalyst for change to a culture of greater openness.
- It is part of a wider group of policies to modernise government in the age of the internet, where much more information is expected to be published regularly and made available electronically.
- Public awareness of the opportunities and rights provided by the FOIA is likely to be much greater than is the case with the code, leading to many more requests including more contentious ones.

The public image of a department may be affected strongly by its publication policy and the way in which requests are handled, in particular early ones. Efficiency, courtesy and helpfulness in guiding applicants can be as important as the amount of information which is released. The FOIA provides an opportunity for a department to engage positively with its clients and with the wider public.

In addition to the differences between a code of practice and a law, there are some important practical differences between the FOIA and the current code:

- The requirement to adopt publication schemes, approved by the Information Commissioner.
- The wide role of the Information Commissioner to promote good practice, and to give information about (in effect promote) the Act to the public.
- An easy appeal process for a dissatisfied applicant to the Information Commissioner, and from her to the Information Tribunal.
- The ability of the Information Commissioner to impose her view of the balance of the public interest in disclosure over the judgement of a department.

- A code of practice on records management, establishing the standard which authorities across the public sector must reach.

This guide focuses upon the handling of requests made under the FOIA, and does not address in detail, related questions of records management, publication schemes, and charging policies. It does not apply to the different FOI regime that will apply to the devolved bodies in Scotland.

## **2. Overview of the Act**

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The Act can appear to be quite complex in the way in which different provisions inter-relate. However, in essence, it follows a basic structure common to FOI laws in other countries:

There is a general right of access to information 'held' by public authorities. This includes both a right to be told whether information exists as well as the right to receive information.

The applicant must provide: sufficient detail about the information to enable an authority to identify it; basic contact details to enable a reply to be sent; and must pay fees where these are required.

The right of access to information is subject to a range of exemptions, covering for example, security, international relations, formulation of government policy, and commercial confidentiality. A number of the exemptions are 'absolute'. Once it is decided that the information is properly subject to an absolute exemption, no release is required under the FOIA (although discretionary release is still possible). In the case of the other exemptions, once it is decided that one or more of these exemptions should apply, the department is then nevertheless required to release the information unless the public interest in applying the exemption is greater than the public interest in disclosure.

There are arrangements for enforcement and appeal with a substantial role for the newly created Information Commissioner, who is charged with the promotion of good practice, and who will adjudicate appeals from dissatisfied applicants, and can require disclosure.



## 3. More detailed provisions

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### 3.1 General right of access

The right of access to information applies to anyone, natural or legal persons worldwide. There is no requirement to be a citizen, to be resident in the country or to give a reason for the request.

### 3.2 Which authorities

A very wide range of authorities are covered. They include all government departments, Parliament, local authorities, health authorities, educational establishments in receipt of state funding, police authorities, and over 400 other public bodies such as The Post Office, The Civil Aviation Authority, and the Tate Gallery, which are named separately. It has been stated in Parliament that the Act will apply to some 50,000 separate bodies.

#### **Practical Tip**

If you want to find out if a body is covered by the Act, look in Schedule 1. But note that the Secretary of State may by order amend this Schedule.

The Secretary of State also has powers to designate by order as a public authority subject to the FOIA, 'any person' who appears to be exercising functions of a public nature or is providing public services under contract with a public authority.

### 3.3 Charges

An authority may charge a fee for dealing with a request. This will have to be calculated according to 'Fees Regulations'. The current draft states that the maximum fee shall not exceed 10% of the prescribed costs and the disbursements. 'Prescribed costs' means the costs reasonably incurred in locating and retrieving the information. They do not include any costs spent deciding how much information to release, nor the costs of consulting with third parties. 'Disbursements' are the direct costs of communicating the information requested.

#### **Practical Tip**

Open a separate file for each FOI request which is likely to cause a significant amount of work. Keep a timesheet on the inside cover. Record on it the time spent in locating and retrieving the information, and the number of photocopies made.

Where the 'prescribed costs' are £500 or more, the authority is not obliged to comply with the request.

It would be prudent for an authority to work on the basis that such costs are calculated on the basis of reasonably organised and accessible records that are created, held and managed in compliance with the Lord Chancellor's Code of Practice on the management of records.

### **3.4 Publication schemes**

The Act places a duty on public authorities to adopt, implement and operate publication schemes. These must be approved by the Information Commissioner. Public authorities may develop their own schemes for the Information Commissioner's approval or make use of model publication schemes that the Commissioner proposes to develop. Such schemes must specify the classes of information the authority publishes or intends to publish, specify the manner of publication, and any charges.

In planning publication schemes, public authorities must have regard to the public interest in allowing public access to its information, and in the publication of reasons for its decisions.

At a minimum publication schemes must specify:

- the classes of information which the public authority publishes
- the manner in which information of each class is published
- whether the material is available free of charge or on payment.

Once approved, it will be up to the authority to decide how to publish information about its scheme. Publication schemes must be reviewed periodically.

One of the benefits to an authority that will arise from a publication scheme is that an exemption in S.21 will apply to the information that is published (information accessible by other means). This is an 'absolute' exemption and extensive publication may assist an authority to reduce the costs it might otherwise incur in meeting the requirements of the FOIA. However, care will need to be taken in specifying the classes of information to be published, since an authority will be expected to publish exactly what it specifies in its scheme. This is an important aspect of the FOIA and the Information Commissioner is giving priority to the development of guidance for authorities in this area.

**Practical Tip:**

Publish as much as you can through your publication scheme. It will save you time having to respond to individual requests. You can decide what to publish as part of a regular process, rather than having to decide what to provide to an applicant within the timescale of the Act.

### 3.5 Responding to requests

Normally, public authorities will have to respond to requests within 20 working days. In cases where the information is subject to an exemption and the authority is required to consider the balance of the public interest, then the response must be within a 'reasonable' time. However the authority is still required within the 20 day period to issue a notice stating that an exemption applies, and including an estimate of the date by which a decision will be made.

Where the authority decides that the public interest requires that the information be withheld, it must supply the applicant with a notice giving its reasons within a reasonable time.

**Practical Tip:**

These deadlines are very tight. Where possible get the applicant's telephone number and email address. Establish direct contact. Find out what the applicant really wants. It can save a lot of time, and help fulfil your duty to advise and assist requesters.

### 3.6 Refusals

Public authorities are required to give notice of refusals within 20 days, specifying the exemption in question and stating why the exemption applies. Where a refusal is based upon the cost of compliance or where it judges the request to be vexatious or repeated, then it must give the applicant a similar notice with reasons.

These notices must contain particulars of any procedure the authority has for dealing with complaints, and particulars of the right to apply to the Information Commissioner for a decision.

**Practical Tip:**

The Information Commissioner in Ireland in his 1999 Annual Report stressed that better communication of decisions can cut out unnecessary

**Practical Tip: Severing Information**

- You must disclose information which is not exempt. This will sometimes involve disclosing some of the information requested, even if the rest is withheld.
- Make a photocopy of all the documents requested. Mask the passages which are not to be disclosed. Make a second photocopy so that these passages appear blank.
- Annotate in the margin against each blank passage the section of the Act under which this passage is claimed to be exempt.
- Explain in the covering letter that the relevant exemptions are marked on the documents.
- Explain how you have applied the balancing public interest test, and why the public interest in withholding the information outweighed the public interest in disclosure (see p. 15).

**3.7 Implementation**

All provisions of the Act must come into force by November 2005 at the latest. The Secretary of State may, by order, specify different dates by which the Act will apply in full to different authorities.

It is expected that the Act will apply to central government departments from mid 2002, local authorities from late 2002, with health authorities and education establishments to follow in later years.

Although authorities do not need to comply with the FOIA until brought within its scope, the Act is fully retrospective in terms of the information covered.

**Practical Tip**

Because the Act is fully retrospective, you need to sort out now your systems for retrieving current and past records. For guidance consult the Public Trust Office website at: <http://www.pro.gov.uk/>

### 3.8 Exemptions

There are two general categories of exemptions; those which are absolute and those where there is a duty to consider the public interest in disclosing information.

- *Absolute*

Out of the 23 exemptions listed in the Act, eight are in whole or part 'absolute' exemptions. These include:

- S.21 Information accessible to applicants by other means.
- S.23 Information dealing with security matters (as certified by a Minister of the Crown) supplied by or relating to named security organisations.
- S.32 Court records etc.
- S.34 Parliamentary privilege (as certified by the Speaker of the House or Clerk of the Parliaments).
- S.36 Prejudice to effective conduct of public affairs (applying only to information held by the House of Commons or House of Lords).
- S.40 Personal information (where the applicant is the subject of the information).
- S.41 Information provided in confidence.
- S.44 Prohibitions on disclosure (by any enactment, incompatibility with any community obligation or contempt of court)

**Practical Tip**

In the vast majority of cases the only absolute exemptions which might apply are S.21 (information accessible by other means), and S.40 (personal information). These are roadblocks which divert the applicant down another road: to the public source of the information (S.21), or to the Data Protection Act 1998 (S.40).

In the case of any of these absolute exemptions, there is no requirement on the authority to consider the public interest in possible disclosure.

This does not mean that disclosure is not required in all cases where one of these exemptions apply. It means that disclosure is not required by this Act. For example, disclosure of personal information may be required under the provisions of the Data Protection Act; and of information provided in confidence under exceptions to the common law duty of confidence.

In the event of a complaint about non-disclosure, the Information Commissioner will decide whether the information in question is properly subject to the exemption that has been applied.

*Subject to public interest test*

The majority of exemptions are subject to a public interest test:

- S.22 Information intended for future publication
- S.24 National security (excluding matters covered by the absolute exemption at S.23)
- S.26 Defence
- S.27 International relations
- S.28 Relations within the UK
- S.29 The economy
- S.30 Investigations and proceedings conducted by public authorities
- S.31 Law enforcement
- S.33 Audit functions
- S.35 Formulation of government policy
- S.36 Prejudice to the effective conduct of public affairs (excluding matters covered under the absolute exemption at S.36)
- S.37 Communications with the Queen
- S.38 Health and safety
- S.39 Environmental information
- S.40 Personal information (where the information concerns a third party)
- S.42 Legal professional privilege
- S.43 Commercial interests.

Once an authority has decided that one or more of the exemptions applies to a particular case, it must nevertheless release the information unless it decides that in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosure.

Some useful insights come from overseas. The Australian Law Reform Commission in 1995 identified factors in favour of disclosure:

- the public interest in government information being accessible
- whether the document would disclose reasons for a decision
- whether disclosure would contribute to a debate on a matter of public interest
- whether disclosure would enhance scrutiny of government decision making processes and thereby improve accountability and participation
- potential or actual embarrassment [to government] is not a valid criterion.

The Information Commissioner in Ireland, in his 1999 report weighed the public interest in a number of his decisions:

- In a case brought by a newspaper relating to the expenses paid to members of the Irish Parliament, he decided that the public interest in ensuring accountability for the use of public funds greatly outweighed any right to privacy in relation to details of expense claims.
- In a case brought by vehicle suppliers to the Government, he decided that the public interest in terms of openness and accountability of disclosing tender prices outweighed the possible harm to tenderers.
- In a ruling on a request for a list detailing companies in which jobs were at risk, he found that the public interest favoured withholding the information.

#### **Practical Tip**

How do you weigh up the balance of the public interest?

Such a test depends to a high degree on judgement, which means the main tips are:

To document the reasons on both sides as objectively as possible.

To examine guidance from the Commissioner and case law as it emerges.

In the UK in the event of a complaint by a dissatisfied applicant, the Information Commissioner may make her own judgement of the balance of the public interest and require disclosure in the light of this.

### **3.9 Role of the Information Commissioner and Tribunal**

#### *The Information Commissioner*

The Information Commissioner is given a major role in the operation of the Act. Her main responsibilities are to:

- approve/revoke publication schemes

- promote good practice
- promote public authorities' compliance with the Act
- disseminate information and give advice about the Act
- with consent, assess whether a public authority is following good practice
- report annually to Parliament.

The duty to promote 'good practice' goes wider than the enforcement of the right of access. The Information Commissioner may promote access to information held by public authorities in general, and give advice, for example on the handling of requests and the management of records. The Information Commissioner may also provide consultancy services and advice to authorities in return for payment.

She has a duty to promote observance of good practice in records management, under the code of practice to be issued by the Lord Chancellor; and good practice in advising and assisting applicants, transfers of requests, consulting with third parties and handling of complaints under the code of practice to be issued by the Home Secretary.

A complainant may apply to the Information Commissioner for a 'decision' that a request for information has not been dealt with in accordance with the requirements of the Act. The Information Commissioner may issue a decision notice to an authority requiring compliance.

The Commissioner may issue an 'information notice' requiring an authority to provide specific information to help the Commissioner determine a complaint.

Where the Commissioner is satisfied that the authority has failed to comply with the Act, she may issue an 'enforcement notice' requiring the authority to comply within a specified timescale.

### *The Information Tribunal*

The Tribunal can receive appeals either from an applicant or from a public authority. There is no right of appeal for third parties. The Tribunal may allow or dismiss an appeal or substitute a notice that could have been served by the Information Commissioner.

An appeal from the Tribunal is to the High Court and can only be made on points of law.

## **3.10 Appeals and enforcement**

### *Four tiers of appeal*

There are four tiers of appeal for dissatisfied applicants:

- The internal complaints system of the authority



- The Information Commissioner
- The Information Tribunal
- The Courts (on a point of law).

*'Executive override'*

In exceptional cases an 'accountable person', may issue a certificate stating that they have formed, on reasonable grounds, the view that the authority did not fail to comply with the requirements of the Act. In this case, the authority need not comply with a decision or enforcement notice (relating to the public interest test) issued by the Commissioner. Such a certificate, which applies just to Central Government, can only be issued by a Cabinet Minister or by the Attorney General and as soon as practicable a copy of the certificate must be laid before each House of Parliament. The authority must also inform the applicant of the reasons for its decision.

## **4. FOIA and Other Access Regimes - Data Protection Act 1998, Environmental Information Regulations 1992 (amended 1998), Local Government.**

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The FOIA is not a comprehensive access regime. It has interfaces to a number of other laws and regulations that regulate access to specific information. These include areas where a high volume of requests may be expected.

### **4.1 Data Protection Act 1998**

A request by an individual for information about him or herself is exempt under the FOIA and will continue to be treated as a 'subject access request' under the Data Protection Act. The Information Commissioner will act as the Commissioner and single point of contact for public authorities and the public for both the Data Protection Act and Freedom of Information Act. For guidance on subject access requests see p. 20 and Annex B.

### **4.2 Environmental Information Regulations 1992 (amended 1998)**

The Environmental Information Regulations 1992 (amended 1998) currently provide a right of access to environmental information held by public authorities. Environmental information is broadly defined in the Regulations as any information which relates to:

- “ (a) the state of any water or air, the state of any flora or fauna, the state of any soil or the state of any natural site or other land;
- (b) any activities or measures (including activities giving rise to noise or any other nuisance) which adversely affect anything mentioned in sub- paragraph (a) above or are likely adversely to affect anything so mentioned;
- (c) any activities or administrative or other measures (including any environmental management programmes) which are designed to protect anything so mentioned.”

There are exemptions from disclosure under the Regulations and these differ from those under the FOIA – they tend to be less restrictive.

The FOIA contains a provision under which the Secretary of State may revise these Regulations in order to implement the Aarhus Convention (S.74). To conform with the Convention, the main changes are likely to be in a wider definition of what constitutes environmental information:

- (a) the state of elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, biological diversity and its components, including genetically modified organisms and the interaction among these elements;
- (b) factors, such as substances, energy, noise or radiation, affecting or likely to affect the elements of the environment referred to in sub- paragraph (a) above; activities or measures including administrative measures, policies, legislation, plans, programmes, environmental agreements affecting those elements of the environment referred to in sub- paragraph (a) above; cost-benefit and other economic analyses and assumptions used in environmental decision-making;
- (c) the state of human health and safety, conditions of human life, cultural sites and built structures, inasmuch as they are or may be affected by the state of the elements of the environment or, through these elements, by the factors, activities or measures referred to in sub-paragraph (b) above.

**Practical Tip**

- With the very broad definition of environmental information, consider whether requests for information about development and planning for example, should be handled under the Environmental Regulations.
- Environmental Information is potentially exempt under the FOIA (S.39).
- Revised Environmental Regulations are expected to be in place before the FOIA.

### **4.3 Local Government**

Under the Local Government (Access to Information) Act 1985, local authorities have been under a statutory duty to disclose information for more than 16 years. The statute gives the public rights of access to meetings, reports and documents subject to specified confidentiality provisions; and gives local authorities duties to publish certain information. In some senses, this puts local government ahead of central government in terms of openness. But the powers and duties of the 1985 Act are limited.

The 1985 Act provides access to meetings of principal council and their committees or sub-committees (except where confidential or exempt information would be disclosed). The public also has a right to inspect copies of the agenda for such meetings and any associated reports and background papers at the offices of the council at least three clear days before the meeting. The report can be severed and the background papers withheld to exclude information that will be discussed in private at the meeting. After the meeting, the public has a further right to inspect the minutes (minus any items discussed in private) and to be given a written summary of the proceedings dealing with exempt information.

The Local Government Act 2000 (S.22) extends this openness regime to meetings of a local authority executive, or a committee of such an executive. The Secretary of State may, through regulations, require them to disclose prescribed information in a given way or form before decisions are made. A written record must be kept and these, together with such reports, background papers or other documents as may be prescribed, must be made available to members of the public in accordance with regulations made by the Secretary of State. Such regulations may prescribe information that can be exempt from disclosure.

Details of the information covered and the specific exemptions are included in the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 (SI 2000 No. 3272) which came into force in January 2001.

The FOIA, however, will extend to all other information held by local authorities.

## 5. High volume areas and areas that are likely to be contentious

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### 5.1 Requests for personal data (subject access requests)

Experience in some overseas countries indicates that most requests for information concern personal data. These requests will continue to be treated as subject access requests under the Data Protection Act 1998. This Act has been extended to cover all personal information held by public authorities.

Personal information will be the subject of an absolute exemption under the FOIA (S.40) which channel requests via the Data Protection Act. The FOIA will, however, apply to requests for third party information. If disclosure of third party information would breach any of the data protection principles this information is the subject of an absolute exemption and there is no requirement to consider disclosure in the public interest.

Applicants are not expected to specify whether a request for personal information is submitted under the DPA or FOIA. The authority receiving the request should determine the correct path (see flowchart at annex B).

#### **Practical Tip**

Most requests for information will concern personal data:

- Personal data is exempt under the FOIA (S.40). Requests for 'my personal file' should be treated as subject access requests under the Data Protection Act.
- Requests for information about third parties are covered by the FOIA but data protection principles apply.
- The public authority receiving the request decides how it should be handled. Some requests will need to be handled under both the Data Protection Act and the FOIA.

## 5.2 Requests for commercial information

Requests for commercial information may be contentious and of high volume. In many countries, requests for information of commercial value have been the highest or next highest category.

Examples include requests for information about:

- public contracts and their performance
- public grants and the results
- licences granted, the conditions that apply and any periodic reports provided
- details of submissions made in consultation exercises
- regulatory activity.

While a number of possible exemptions could apply to some of this information, the exemptions most likely to be considered are those that relate to:

- information provided in confidence (S.41)
- commercial interests. (S.43)

The exemption for information provided in confidence, in effect retains the current position under the common law duty of confidence. The Commissioner has the power to rule on whether this exemption has been properly claimed. The Home Office code of practice will discourage acceptance by an authority of a duty of confidence unless it is necessary. An authority would be prudent to plan on the basis that good reasons for acceptance of such a duty will be needed, and may need to be justified to the Commissioner in the context of good practice and compliance with the code.

It is important to recognise that the marking of documents as confidential does not settle the matter. The test is whether a duty of confidence applies at the time a request is made.

The exemption for commercial interests, comprises both trade secrets and information that 'would or would be likely to prejudice the commercial interests of any person.' Even when it is judged that these tests are met, an authority must still release the information unless it considers that the public interest in retaining the exemption is greater than the public interest in releasing it.

Much of this information will have been obtained from third parties. The Home Office code will include provisions for consultation with third parties or persons whose interests are likely to be affected by release of information that has been requested. The release of information obtained from third parties has proved contentious in other countries, in particular in the USA. Careful implementation of the Act and the code combined with full documentation of the process will

be vital where, in effect, a department sits between an applicant using the FOIA, and a third party, often a company, concerned that its confidential information may be revealed.

It will be especially valuable for clear notice to be given to submitters of information to government departments about the terms upon which their information is given, and the steps they would be advised to take to ensure that their genuinely confidential information is protected. It is important to avoid misunderstandings and situations where an implied rather than an explicit duty of confidence may reasonably be claimed.

#### **Practical Tip**

When receiving commercial information from a third party:

- Ensure that the terms on which it is provided are recorded and clearly understood by all parties
- Understand, agree and record the reasons for accepting information 'in confidence'.
- Advise providers of commercial information on how to separate exempt information from that which could be released
- Question providers who appear to label large quantities of information as 'commercial in confidence' without a convincing reason.

### **5.3 Reports and advice in sensitive areas of policy**

Reports and advice from experts in sensitive areas of policy information is exempt if it relates to the formulation of government policy (S.35), or 'would or would be likely to prejudice' the effective conduct of public affairs (S.36). These exemptions cover any communication between Ministers, including papers of Cabinet and Cabinet committees; advice by the law officers; and information about the operation of Ministerial private offices. But once a policy decision has been made, the statistical information which informed the decision cannot be withheld under the exemption in S.35. In assessing the balance of public interest, S.35(4) tilts the balance towards disclosure of factual information which has been used to inform the decision.

There is a separate exemption for information if its disclosure would be likely to inhibit the free and frank provision of advice, free and frank exchange of views, or would 'otherwise prejudice the effective conduct of public affairs' (S.36). This exemption is also subject to a balancing public

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#### **Practical tip**

When preparing policy advice, separate as much as possible

- statistical information
- factual information
- recommendations and advice

This makes it easier to sever statistical and factual information for release

## 6. Handling requests under the Freedom of Information Act

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### 6.1 The request process

Public authorities should publish their procedures for dealing with requests for information and be prepared to offer advice and assistance to persons making requests.

Requests must be made in writing. If an applicant is unable to do so, the authority should refer the person to others who might be able to help or make a written note of a verbal request which the applicant may verify and then return as a written request.

The applicant does not have to give reasons for the request or any indication of the use to which any information disclosed might be put.

Where insufficient information is given to identify or locate information, the authority should attempt to help the applicant to describe more clearly the information being sought. If it is still not possible to identify or locate the information, the authority should disclose what information it can and explain why it cannot take the request any further. An authority may decline to provide assistance to applicants whose requests are considered 'vexatious' within the meaning of S.12 of the Act.

#### **Practical Tip**

- It will be important to make the procedure for an applicant as clear and straightforward as possible. It will save misunderstandings, time and effort.
- The Information Commissioner in Ireland has reported a common problem was time wasted because what an applicant really wanted was misunderstood.
- Where possible get the applicant's telephone number or email address. Establish direct contact. Talk to them: find out what they really want.

## 6.2 Examining a request

See the flowchart and explanatory notes at Annex A.

## 6.3 Transfers of requests

If an authority receives a request for information which it does not hold but believes may be held by another authority it may need to consult that authority and transfer the request. This may also be necessary where parts of the information requested are held by different authorities.

The authority receiving the request will need to advise the applicant that it does not hold any or part of the information. It will need to consider whether it is appropriate to transfer the request, to inform the applicant and seek his or her views. An applicant may have grounds for objecting to the transfer of a request. If this is considered a possibility, the request should only be transferred with the applicant's consent.

The authority first receiving the request must disclose any of the information it holds (as set out under the Act) before transferring the request. Transfers of requests should take place promptly.

If the request cannot be transferred, the authority should provide what advice it can to the applicant on how best to pursue his or her request.

### **Practical Tip**

- When reviewing records management policies and systems in the light of the FOIA, it will be useful to record clearly what information is received from and copied to other authorities, what is held by other authorities that is relevant to the functions of the authority, and the relevant people to contact.
- Time and effort are saved when an applicant can find quickly the right person to deal with his or her request, who can advise the applicant to frame the request in the most appropriate way to the right person in the right authority.



## 6.4 Complaints

Public authorities will need to put in place procedures for dealing with complaints. Details of the complaint procedures should be made available to applicants in connection with all decisions taken under the Act.

Complaint procedures should be easy to understand and capable of changing or amending initial decisions. Where possible, complaints should not be handled by persons who participated in making the original decision. They should be handled by more senior officials.

Complaints should be handled promptly (according to published target times) and properly recorded.

If a complaint is upheld that information should be disclosed, this should be done as quickly as possible. If a complaint is upheld indicating a failure to follow the proper procedures in considering a request, the authority should apologise for this lapse and indicate how the problem will be remedied.

If the complaint procedure upholds an initial decision not to disclose information, the applicant should be advised of his or her right and the steps involved to take the matter to the Information Commissioner.

### **Practical Tip**

- An effective and responsive complaints system is central to the effective operation of the FOIA. It is an opportunity to demonstrate customer care and to rectify mistakes.
- In well run organisations, the responsiveness of a complaints system is measured with great care. A complaint is an opportunity to demonstrate the professionalism of the organisation. When an applicant complains, the way in which the complaint is handled, even when his or her case is not accepted, will be reflected in the way the applicant regards the organisation and speaks about it to friends and colleagues.

## 7. Preparing for the FOIA

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FOI is not a new phenomenon for the many authorities already subject to the existing Code of Practice on Access to Government Information, nor for local government. While guidance and advice will be available from the centre and the Information Commissioner, authorities will be expected to exercise ownership of the FOIA.

The FOIA is a complex piece of legislation that imposes greater demands on public authorities than the existing code of practice. There will be more requests, more complex requests and more contentious requests. The timeframe for dealing with such requests is tight. Good records management will be essential. An authority which is unsure or slow in its handling of requests will harm its public profile.

The requirement to implement publication schemes to be approved by the Information Commissioner will be more exacting than the publication schedule specified in the current code. The Information Commissioner will be working with groups of public authorities to develop guidance on what should be included in publication schemes. A key task for all public authorities and their representative bodies before the implementation of the FOIA will be to agree their publication schemes with the Information Commissioner. The Commissioner intends to produce shortly:

- An introductory guide to publication schemes
- An initial template or generic scheme
- A draft of the Commissioner's own scheme
- The criteria the Commissioner will adopt in approving a scheme.

There will be a need to co-ordinate the application of the FOIA with the Data Protection Act and the Environmental Information Regulations. It will not always be clear under which regime a request should be handled.

Maintaining good communication with others is crucial. Authorities will need to be able to communicate and reach agreement quickly with other public authorities when handling or transferring requests. Consultation with third parties and maintaining a helpful disposition towards applicants will call for tact and diplomacy.

And, of course, preparations should not be left to the last minute.

**Practical Tip**

No one structure will serve the needs of all authorities, but obvious elements to be considered include the need for:

- an adequately resourced 'Information Coordinator' explicitly supported by senior management
- designated officers in each part of the authority to work with the 'Information Coordinator'
- an implementation plan and timetable
- the early development of a publication scheme
- a rational and consistent approach in interpreting exemptions and exercising discretion to release information in the public interest
- awareness and functional training in the requirements of the FOIA
- the overhaul of record management systems and procedures for weeding and disposing of documents
- testing of the procedures put in place with possible requests
- a willing and positive attitude to assist applicants.

## 8. Sources of further information and advice

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Home Office (FOI team): [www.homeoffice.gov.uk/foi/index.htm](http://www.homeoffice.gov.uk/foi/index.htm)

Freedom of Information Act 2000

Freedom of Information Act 2000, Explanatory Notes

Draft Code of Practice on the Discharge of Functions of Public Authorities, under Part I of the Freedom of Information Act 2000.

Report of the Advisory Group on Openness in the Public Sector, report to the Home Secretary, December 1999.

Draft Statutory Instrument, Freedom of Information, The Freedom of Information (Fees, Appropriate Limit and Time Limits) Regulations 2000

Lord Chancellor's Code of Practice on the Management of Records under Freedom of Information. (21 July 2000)

Information Commissioner: [www.dataprotection.gov.uk](http://www.dataprotection.gov.uk)

Introduction to the Freedom of Information Act 2000

Public Record Office: [www.pro.gov.uk/recordsmanagement/](http://www.pro.gov.uk/recordsmanagement/)

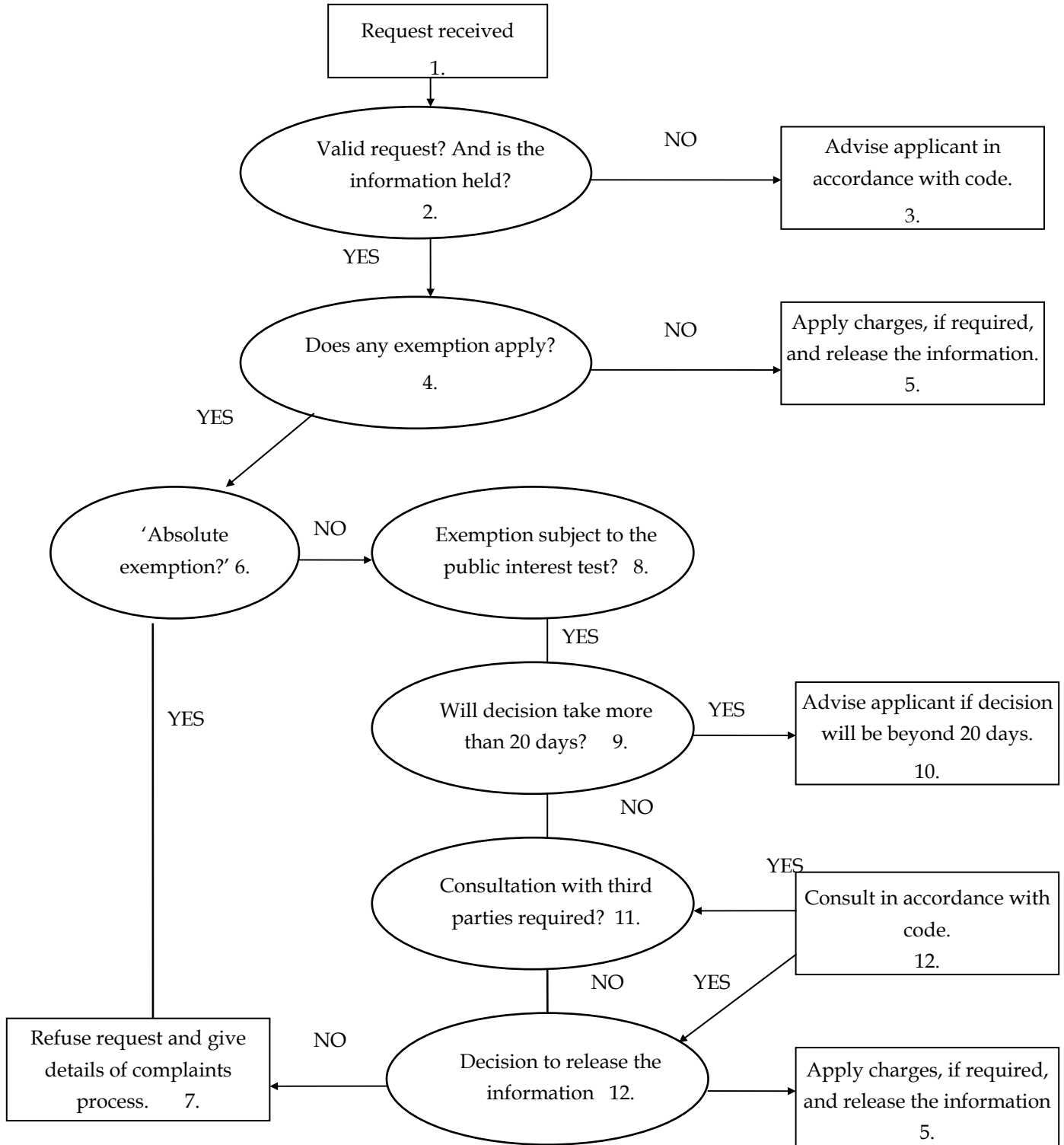
Campaign for Freedom of Information: [www.cfoi.org.uk](http://www.cfoi.org.uk)

Constitution Unit: [www.ucl.ac.uk/constitution-unit](http://www.ucl.ac.uk/constitution-unit)



## 9. Annex A

### Handling Requests Under the Freedom of Information Act 2000



These notes relate to numbered boxes in the chart:

1. Request received. This is the defined starting point for this decision chart
2. Valid request? And for information which is 'held'?

This is a request which complies with the conditions specified in S.7. Essentially a request in 'writing', which includes name and address details for the applicant, and a description of the information requested.

It is a request for information which is 'held' by the department

This is also a request which is not vexatious or repeated as defined in S.14.

An applicant may require advice and assistance to frame a valid request, and sometimes to address it to another department where the information is held. This should be provided in accordance with S.16 and the code of practice.
3. Does any exemption apply?

It may be that more than one exemption applies. In this case follow the process for all those that most clearly apply.
4. If no exemption applies, then the information should be released, subject to prior payment of any charges, if required. So far as reasonably practicable, use the means preferred by the applicant.
5. If the exemption is one of the 'absolute' exemptions defined in S.2, then release will normally be refused.
6. The process of refusal must comply with the requirements of S.17. This includes giving the applicant a notice to explain the refusal and giving details of any procedure for dealing with complaints and the right of appeal to the Commissioner as defined in S.50.
7. Exemptions that are not defined as 'absolute' are subject to a public interest test.
8. This may take longer than 20 days to decide, but only where a longer period is reasonable in the circumstances.
9. In that event, a notice must be given to the requester within the 20 day period, as specified in S.17, to include an estimate of the date by which the authority expects to reach a decision.
10. Consultation with third parties may be required if their interests could be affected by release of the information requested, and such consultation may influence the decision.
11. The consultation should be carried out in accordance with the code of practice.
12. Decision to release the information. If the decision is to release the information, then the process described in 5 above is followed. If the decision is to refuse, then the process described in 7 above is followed.





## 10. Annex B

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FREEDOM OF INFORMATION ACT 2000<sup>3</sup>  
PROVISIONS GOVERNING ACCESS TO PERSONAL INFORMATION HELD BY PUBLIC AUTHORITIES

Chart found on website at: <http://wood.ccta.gov.uk/dpr/dpdoc.nsf>  
then select FOI and 'Access to personal information'.  
Download as rtf. file in win 95 - formatting not OK in win 3.1

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