


Briefing

Date: 17th April 2012
To: Elected Members
cc:
From: Lynn Wyeth, Information Governance Manager
Tel/Ext: x297605
RE:/Ref: Freedom of Information (FOI) Requests & Data Protection Awareness.

Dear Councillor

Due to some recent FOI requests for information which may possibly be held by councillors, we thought it would be useful to remind elected members about what information you may have to provide in order to comply with the law.

We've also taken the opportunity to remind councillors about keeping personal data safe due to some recent high profile cases nationally involving politicians.

	<p>Elected members have several hats on. You represent your constituents, your political party and your council.</p> <p>You will therefore hold information for different purposes.</p> <p>Under the FOI Act you only have to release information that you 'hold on behalf of the Council'</p>
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- Correspondence between councillors or information held by a councillor for their own private, political or representative purposes (e.g. constituents' casework, political Group work) will not usually be released under FOI.
- Information received, created or held by a councillor on behalf of the Council may have to be released, for example, where a councillor is acting in a role as part of a council cabinet / working group / committee etc.

If the information then contains other people's details, their information may be exempt from release under s40 of the FOI Act. **If in any doubt, seek advice from the Information Governance Manager.**

Examples of information you may have to release:

- Committee papers, including your notes written on them.
- Emails to officers relating to Council matters.
- Emails to journalists or third parties relating to official Council matters where you represent the Council.
- Minutes and papers from meetings where you are representing the Council.

Examples of information you will not have to release:

- Political emails and correspondence to fellow party members discussing political stances, debates.
- Political documents including Group papers, campaign materials.
- Contents of letters and emails to Constituents.
- Communications to third parties in a personal or political capacity.

Using your personal email or own computer is no excuse to say you do not hold the information on behalf of the Authority. As the Education Secretary recently found out.

The final decision is yours to make. Please remember, however, that knowingly withholding information which should be released under FOI is a criminal offence.

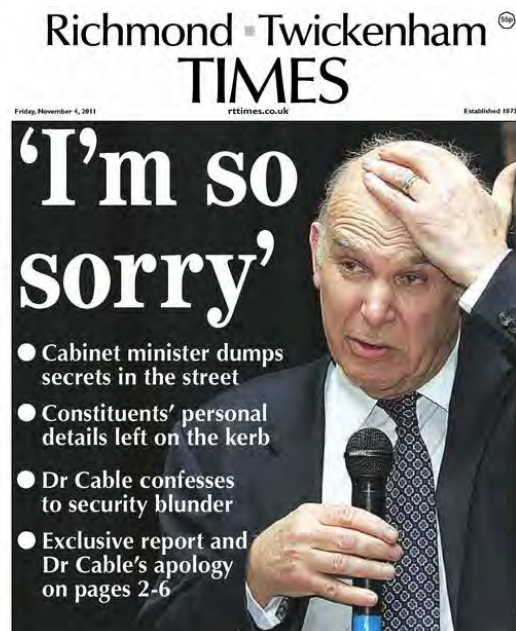
You can find more information at the Information Commissioner's website at http://www.ico.gov.uk/for_organisations/sector_guides/~/_media/documents/library/Freedom_of_Information/Detailed_specialist_guides/fep109_information_produced_or_received_by_councillors_v1.ashx

**If you need any further advice, please don't hesitate to contact:
Lynn Wyeth, Information Governance Manager on 0116 2527605 on B3, NWC.
foia@leicester.gov.uk**

May we also take this opportunity to remind all councillors about their obligations under the Data Protection Act. **You are responsible for any personal data you hold about other individuals, in whatever capacity you are holding it.**

- Never throw papers containing personal data into the recycling bags or bins at home. Get yourself a desktop shredder.
- Make sure papers are in a lockable filing cabinet in your house, in case of burglary.
- Make sure all equipment containing personal data is encrypted and passworded (mobiles, laptops, memory sticks). Ask IT Support for advice.
- Never reveal the data of one individual to another individual without consent.
- Never pass on personal data to the press or journalists.

When it goes wrong...



South Tyneside Councillor Questioned Over Alleged Confidential Document Leak

By Andy Hughes Location: South Shields

A councillor has been questioned by police after confidential documents were allegedly leaked to a local newspaper.

Cllr David Potts, United Kingdom Independence Party (UKIP) member for South Tyneside Council, has been interviewed as part of an investigation by Northumbria Police into an alleged breach of data protection.

It is alleged that Cllr Potts had access to classified papers about an employment tribunal appeal hearing.

Briefing Note

Date: 8th July 2015

To: All Directors

Cc:

From: Lynn Wyeth, Information Governance Manager

Ref:

Tel/Ext: x37 1291

RE: Freedom of Information – Exemption from release under section 36 of policy information and officer advice.

1. Purpose of Briefing Note

- 1.1 To advise all Directors on when advice and policy development information can be withheld from release in response to a Freedom of Information Request.
- 1.2. To highlight the risks of not recording advice and decisions adequately.

2. The Issue

- 2.1 Anecdotal evidence around the country suggests that less written records are being made relating to draft policy or officer advice, for fear of this being subject to release under the Freedom of Information Act.
- 2.2 This results in the following risks:
 - Lack of an audit trail to justify decisions and budget spend;
 - Potential grievances / Employment Tribunal claims from staff, who feel unable to do their job, or feel they have been put at risk by not being allowed to give or document advice they have given and the reasons why;
 - Reduced ability to defend decisions to the Local Government Ombudsman, in court, in a Judicial Review etc.; and
 - Increased FOI appeals as requesters do not believe no records are held.

3 Section 36

- 3.1 This reluctance to record advice and policy discussions is known as the 'Chilling Effect' in FOI circles. It is recognised officers and politicians need a 'Safe Space' to discuss ideas. It was predicted when the Act was drafted and an exemption was written into the Act to deal with such matters: **Section 36: Prejudice to the effective conduct of public affairs.**
- 3.2 Section 36 can be considered if release of the information would, or would be likely to, "inhibit the free and frank provision of advice or exchange of views".
- 3.3 The Council always has to consider the public interest in withholding the information under Section 36 (Remember what is in the public interest is not necessarily what the public may be interested in!)
- 3.4 A Qualified Person must always sign off a Section 36 exemption. The Qualified Person for the Council is Kamal Adatia, City Barrister and Head of Standards.
- 3.5 Examples of information that may be covered by this exemption:
- Draft Policy documents;
 - Minutes of meetings which discuss policy;
 - Emails from officers offering advice to managers / politicians;
 - Unfinished project work; and
 - Information that could cause public unrest, or impact negatively on public funds.

Case studies:

A council successfully refused to disclose a list of schools facing financial difficulties, because this could damage the schools' ability to recruit pupils, as well as making schools less likely to co-operate and share financial information freely with the council.

A university successfully refused to disclose a complete list of staff email addresses. On a previous occasion when email addresses had been disclosed, this led to a security attack, as well as an increase in spam, phishing, and emails directed inappropriately.

A council successfully refused to disclose a list of potential travellers' sites as this could cause citizen protests and increased prejudice against travellers before any decision to name the final 3 sites had been made.

- 3.6 Environmental information can sometimes be more difficult to withhold, but the equivalent exemptions in the Environmental Information Regulation are Reg. 12(4)(d)The request is for unfinished documents and 12(4)(e)The request involves the disclosure of internal communications.

3.7 The exemption may be time limited, and once a decision has been made or time has passed, the exemption may no longer apply.

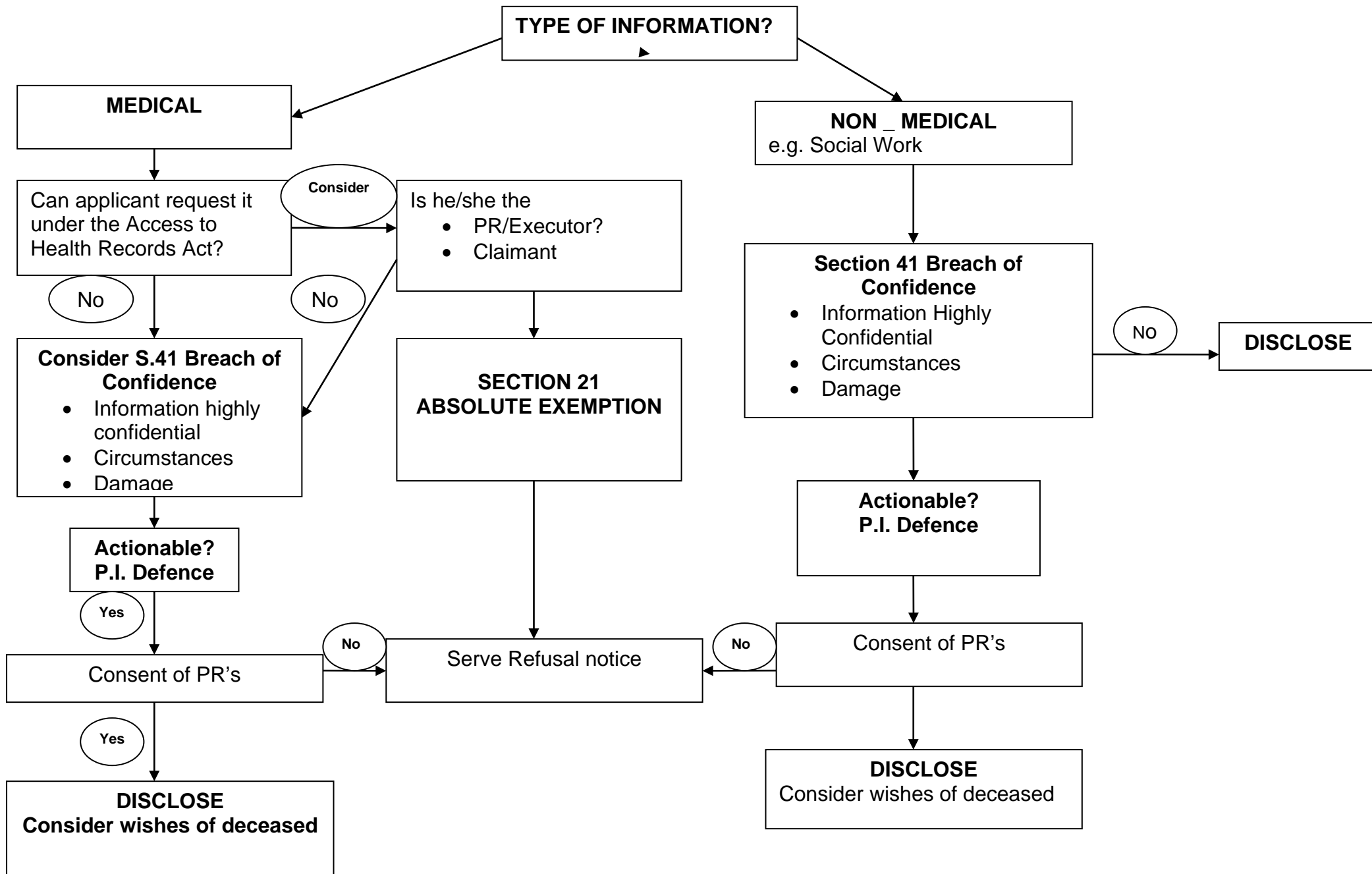
4 Further Guidance

4.1 The ICO provides advice on applying s.36 on its website here: https://ico.org.uk/media/for-organisations/documents/1175/section_36_prejudice_to_effective_conduct_of_public_affairs.pdf

4.2 The Information Governance Manager can be contacted on 0116 4541291 or lynn.wyeth@leicester.gov.uk if you would like to discuss any case where you have any worries about releasing information and think Section 36 may apply.

Lynn Wyeth
Information Governance Manager
x37 1291

ACCESS TO DEAD PEOPLE'S INFORMATION UNDER FOIA



FREEDOM OF INFORMATION ACT 2000 - FOIA ANSWERING REQUESTS FOR INFORMATION - RFI

FOIA legislation gives 20 working days from the first working day following the day the request was received to answer a request fully. Allowing time for administration of the request and the drafting and corporate checking of the response leaves only 10 days for the collation of the information. In other words this requires your attention now.

Some things to remember:

- If you do not hold the information requested you do not have to create it. Although if data can be easily manipulated to create the requested information this may have to be done so. Ask yourself if you could reasonably defend your actions if challenged.
- If you do not hold the information, but think another Public Authority does, tell the coordinator they will take it from there.
- If the information was held, but has been deleted tell the coordinator.
- If the request isn't clear you can ask for clarification from the person who submitted the request. Speak to your co-ordinator ASAP for advice.
- If identifying, extracting and collating the information will take more than 18 hours to compile then the council will refuse the request. You will need to justify the refusal by explaining why it will take so long e.g. there are 800 records and each will take 20 minutes to check. Speak to your co-ordinator ASAP for advice;
- In certain cases the Council will charge for answering requests – it has a Charging Policy that covers this based on the costs of photo-copying, packaging and posting the information. Again, speak to your co-ordinator ASAP for advice.

Do not put off dealing with a request because it seems 'too complex'. Organisations can only raise requests for clarification or fees notices within the 20 working days allowed to respond to the request.

- When you have the information and /or identified the exemptions you wish to claim (see later), pass this to the coordinator who will draft the response and ask you to approve it. When all approvals are in place, the coordinator will forward the request to central Information Governance for acceptance and despatch.

EXEMPTIONS AND PUBLIC INTEREST TESTS (PIT)

Some information may be exempt from disclosure. The base rule for applying exemptions is that if – for good reason - the information must not be released to any particular individual then it should not be released to anyone. The coordinator will advise you on this. Where exemptions are claimed then it will be necessary to carry out a Public Interest Test which is an auditable, independent review designed to challenge the action (as the presumption will always be that to disclosure is correct). You will need to provide justification for your recommendation to withhold.

If a PIT is needed more time can be claimed – up to 20 days – but only if the requestor is notified within the initial 20 day period. Any information not covered by the PIT must be disclosed separately within the initial 20 days.

For more information go to the staff handbook on Insite at <http://insite.council.leicester.gov.uk/e-handbook/information-governance> or speak to your co-ordinator. But do it now – remember the clock is ticking!

Can a charge be made when redacting and extracting information?

Freedom of Information Act 2000

Redacting and extracting information

The Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR) provide rights of public access to information held by public authorities. This is part of a series of guidance notes produced to help public authorities understand their obligations and to promote good practice.

Overview

This guidance will explain:

- what we mean by redaction and extraction;
- what authorities can legitimately take into account when estimating the costs of compliance; and
- what costs can be legitimately included in a fees notice.

What is meant by redaction and extraction?

Extracting information from documents, of any type, and redacting exempt material are different. These are separate tasks that would be carried out once the requested information or the document containing the requested information has been located and retrieved.

Redaction

In the context of FOIA, redaction is the process of editing the requested information to remove exempt material. It is the removal of exempt information from that which can be disclosed by blocking out or otherwise deleting words, names, phrases, sentences, paragraphs or sections of a document before release.

Extraction

In the context of FOIA, extraction is the process by which information included in the request is separated from other information contained in the same document.

What can be included when estimating the costs of compliance?

A public authority may take account only of the costs it reasonably expects to incur in relation to the request in:

- determining whether it holds the information;
- locating the information, or a document which may contain the information;
- retrieving the information, or a document which may contain the information; and
- **extracting** the information from a document containing it.

If the task can clearly be identified as extracting information falling within the scope of the request, the time that is likely to be taken can be included in the estimate of costs.

What cannot be included when estimating the costs of compliance?

A public authority is **not** permitted to take into account any time likely to be spent:

- in considering exemptions that may apply to the information requested; and
- in **redacting** exempt material.

Example:

"The Tribunal agrees with the Commissioner that such an act of deletion, i.e. removal of what may be thought to be exempt material, even at the stage at which the exercise is carried out, cannot sensibly be viewed as coming within the provisions of Regulation 4(3)(d) as it is presently drafted." Mr J Jenkins v Information Commissioner and Department for Environment, Food and Rural Affairs, [EA/2006/0067](#) (2nd November 2007).

What costs can be included in a fees notice?

The maximum fee that can be charged for the provision of information is the total cost the public authority reasonably expects to incur in:

- informing the person making the request whether it holds the information; and

Redacting and extracting information

- communicating the information to the person making the request - this could include the costs of specialised stationery used to hide exempt material and any costs incurred for photocopying or postage.

What costs cannot be included in a fees notice?

A public authority **cannot** include in this fee:

- any costs resulting from the time spent by its staff or others working for it in handling the request;
- The actual or anticipated costs of the time spent in considering exemptions; and
- **redacting** exempt material.

More information

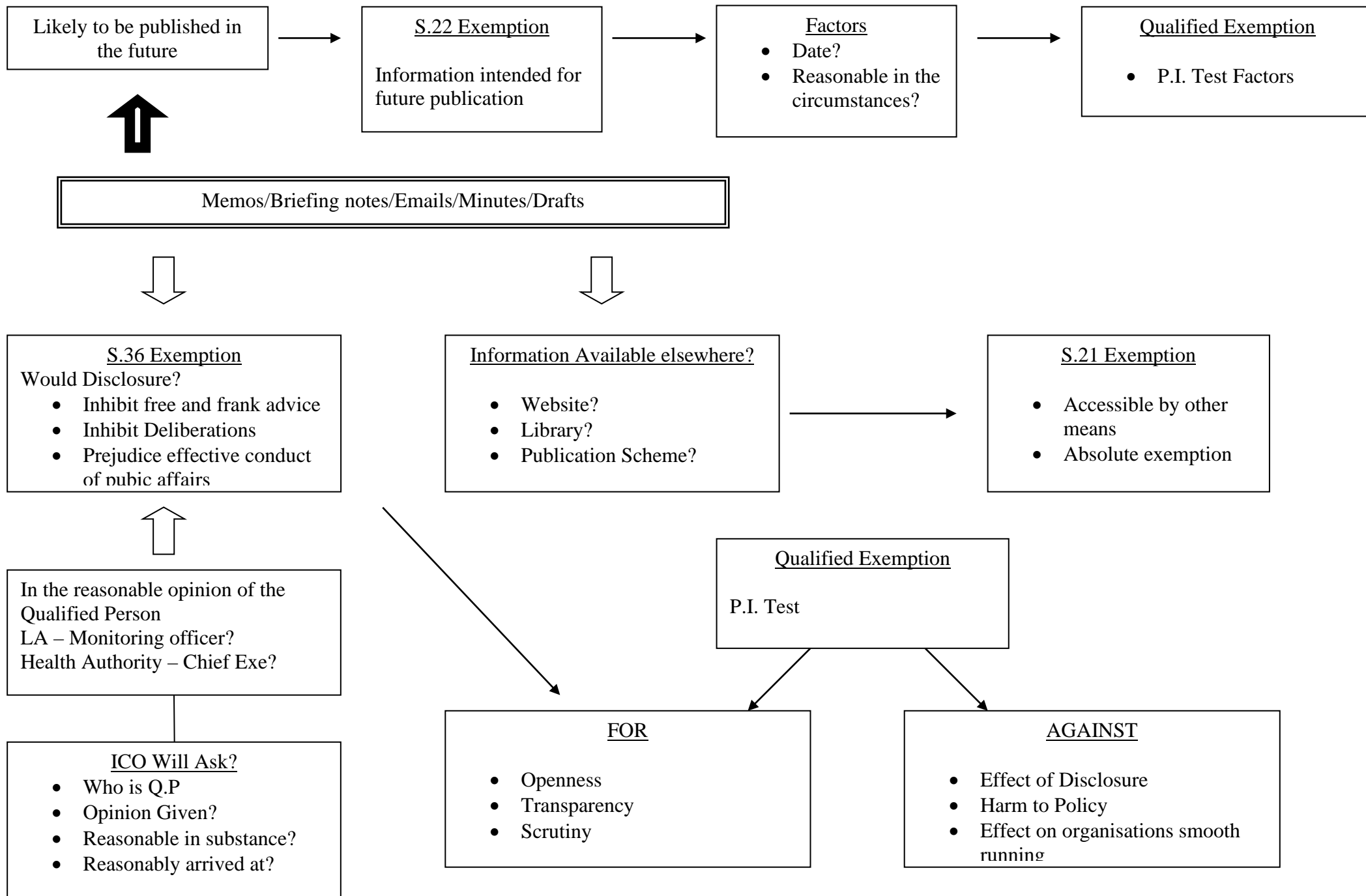
This guidance will be reviewed and considered from time to time in line with new decisions of the Information Commissioner, Tribunal and courts on freedom of information cases. It is a guide to our current recommended approach to this area.

If you need any more information about this or any other aspect of freedom of information, please contact us.

Phone: 0303 123 1113

Website: www.ico.gov.uk

DEALING WITH REQUESTS FOR MINUTES, BRIEFINGS, INFORMAL CORRESPONDENCE, EMAILS AND DRAFTS



DEALING WITH VEXATIOUS REQUESTS : FOIA SECTION 14 (1)

Key Question:

Is the request likely to cause unjustified distress, disruption or irritation?

The request will be vexatious if you can answer yes to one of the questions below, but taking into account the points in the box opposite

Context and History

- Part of pattern of behaviour
- Ongoing/past dispute
- Ongoing campaign
- Re-opening issues



Could the request fairly be seen as obsessive?

- Volume and frequency
- Re-opening issue
- Already had the information

Is the request harassing the authority or causing distress to staff?

- Volume and frequency
- Hostile language
- Abusive language
- Mingling complaints and requests

Would complying with the request impose a significant burden in terms of expense and distraction?

- Would disclosure divert/detract staff from usual work
- Extensive previous correspondence
- Hydra requests
- Volume and frequency

Is the request designed to cause disruption or annoyance?

- Stated intention of requestor

Does the request lack any serious purpose or value

- Reasonable and genuine desire



Serve Refusal Notice via Information Governance Team

Unless S17(6)

- You have already given the same person a refusal notice for a previous vexatious or repeated request
- It would be unreasonable to issue another one.

Keep Records

Clearly setting out the procedure you followed and your reasons for judging the request as vexatious or repeated.

Examples of when the Information Commissioner has deemed a request vexatious

Obsessive

The requester suspected that the council had fraudulently charged an elderly lady for care services not provided. A council investigation, a Committee for Social Care investigation and the police all found no evidence of dishonesty. But the requester persisted with the allegations and made 20 requests in 73 letters and 17 postcards over a two-year period.

The requester had been arguing with the university for 13 years over the award of his degree. He had already exhausted the university's appeal procedure, instructed two firms of solicitors, tried to pursue a court case, and complained to the ICO, his MP and the Lord Chancellor's Department.

the requester had complained after a jobcentre revealed benefit details in breach of the Data Protection Act 1998. The complaint had been investigated and compensation had been paid, and an independent ombudsman's recommendations had been accepted. However, the requester continued a four-year public campaign against the authority, alleging corruption and fraud, threatening legal action and "naming and shaming" individuals.

Harassing and causing distress

The requester made various requests and complaints about the alleged incompetence of the council in ongoing correspondence. He made personal accusations against a particular member of staff and attempted to identify their spouse through FOI requests and other means.

Imposing significant burden

The requester had sent 20 requests, 73 letters and 17 postcards over a two-year period. The letters were to several different employees and overlapped with each other. Requests were repeated before any response could be issued.

Causing disruption and annoyance

The request included the statement: "I am insincere and my purpose is mischievous subversion." Taking this statement with the volume, length and unfocussed nature of the correspondence, it was fair to conclude that the request was designed to cause disruption or annoyance.

Do I have to create information to answer a request?

Freedom of Information Act 2000

Information held: retrieving and compiling information from original sources

The Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR) give rights of public access to information held by public authorities. This is part of a series of guidance notes to help public authorities understand their obligations and to promote good practice.

This guidance will help public authorities to decide whether they hold information for the purposes of FOIA and EIR. It will explain the difference between extracting or compiling existing information and creating new information.

Overview

The FOIA and the EIR apply to information held by public authorities. They do not have to create new information to respond to requests. A public authority is not creating new information where:

- it presents information it holds in the form of a list or schedule;
- compiling an answer to a request involves simple manual manipulation of information held in files; or,
- it extracts information from an electronic database by searching it in the form of a query.

What do the Act and the Regulations say?

Section 1 FOIA states that any person making a request for information is entitled to be told whether the public authority holds the information requested and, if held, to be provided with it.

Section 84 FOIA defines information for these purposes as information recorded in any form.

Section 11 FOIA requires a public authority to provide information in the manner requested if this is reasonably practicable.

Regulation 3(2) EIR states that environmental information is held by a public authority if it is in the possession of the authority and has been produced or received by the authority.

Information held:
retrieving and compiling information from original sources

Lists and Schedules

Public authorities frequently receive requests for lists or schedules of documents, correspondence or other information where the list itself is not in existence. In considering such a request you should remember that the FOIA and the EIR are about the provision of information held on record. Where it is possible to extract the information requested and present it in the form of a list or schedule, this does not amount to the creation of new information.

Example

The Commissioner required a government department to provide information in the form of a schedule. The department had suggested that this would amount to creating new information.

"The information already exists: the public authority cannot be said to be creating it. And, while producing a list of the documents in which the relevant information is contained may be a new task, it is not creating new information; it is simply a re-presentation of existing information as a by-product of responding to the information request."

ICO decision notice [FS50070854](#)

Simple manual compilations

The simple manipulation of information contained in separate sources is not the creation of new information. Requests for information are frequently started with words like "How much..." and "How many...".

Examples might include such requests as:

- How many pupils at the local Grammar School live outside the boundaries of the District Council?
- How much did Councillor X claim in taxi fares last financial year?
- How many laptops belonging to the Department and its executive agencies were stolen in each of the last three years?

For the purpose of these hypothetical examples, information about the geographical area of the district council and the residence of the pupils, the expense claims of Councillor X and reports of stolen equipment are kept in individual and separate records of the authority receiving the request. If this calculation or collation has not already been done, answering this sort of request would require the authority to manually search separate documents containing the information to calculate a total. This type of simple

Information held:
retrieving and compiling information from original sources

manipulation of information on record would not normally amount to the creation of new information. It is presenting information in a different form from that in which it is held. There may be cost issues to be considered under section 12 of the FOIA in retrieving and extracting the information required to answer the request, but this is a separate matter.

What amounts to a simple rather than a complex calculation depends on the level of skill and judgement required to carry out the task. If extracting the information relevant to the request requires a high level of skill and judgement, this would amount to creating new information not already held.

In the first example above, it may need knowledge of whether addresses are within the area of the local authority to determine if a pupil resides there. If this were to be considered too complex a judgement for members of staff handling the request, the public authority should, as good practice, offer the information that can be easily extracted. In this example, assuming that this is held on file, subject to data protection and other considerations, it might be a list of the first part of the post codes of the addresses of pupils.

Example:

A request was made for:

- (a) the number of claims allocated to individual Queens Bench Masters for the years 2001, 2002, 2003 and 2004; and,
- (b) the number of Strike Outs of claims by individual Queen's Bench Masters for the years 2001, 2002, 2003 and 2004.

Case files for the courts would contain a copy of every document relating to the case. The Information Tribunal concluded that the information requested was held in these files. Although it had not been previously compiled in the form requested, a response to the request could be found in the contents of the case files. (It was, however, agreed that the cost limit would be exceeded in retrieving and extracting the information.)

[Mr M L Johnson v Information Commissioner and Ministry of Justice \(EA 2006/0085; 13 July 2007\)](#)

Extracting information from electronic databases

By their very nature, electronic databases are designed to make use of the information recorded in them. Individual items of information are stored in fields. Tables are made up of a number of fields. It is possible to extract information from a database by sorting or filtering the data sources, running a report, or by using a database query tool.

In compiling information from records that need to be examined manually, the complexity of the calculation is a factor to take into account when

Information held:
retrieving and compiling information from original sources

considering whether information is held. The complexity of the query made of an electronic database is not a factor to take into account in deciding whether or not information is held. All information held in electronic databases is held for the purposes of the FOIA. Any query that can be made of a database amounts to retrieval and extraction of information and not the creation of new information.

Example

The Information Tribunal did not accept the suggestion that running a new report in a database would involve "research" or the "creation" of new information. In running existing reports or newly written reports information comes from the same database. No new information needs to be collected in order to obtain information by running a new report.

[Home Office v Information Commissioner \(EA/2008/0027; 15 August 2008\)](#)

Other considerations

For general guidance on what information is caught by FOIA see our [Awareness Guidance No.12: When is information caught by the Freedom of Information Act?](#)

More information

This guidance will be reviewed and considered from time to time in line with new decisions of the Information Commissioner, Tribunal and courts on freedom of information cases. It is a guide to our general recommended approach, although individual cases will always be decided on the basis of their particular circumstances.

If you need any more information about this or any other aspect of freedom of information, please contact us.

Phone: 0303 123 1113

Website: www.ico.gov.uk



Do you think we should release the information we hold on you?

If not, here's some help in answering us.

Both the FOI Act and EIR provide a right of access to information. Information should therefore be released wherever possible. However, it would clearly not be appropriate for all information to be made public. This is recognised by "exemptions" in the FOI Act and "exceptions" in the EIR

Relevant Freedom of Information 2000 Exemptions

- s.22 Information intended for future publication
- s.30 Investigations and proceedings conducted by public authorities
- s.31 Law enforcement
- s.33 Audit functions
- s.36 Prejudice to effective conduct of public affairs
- s.38 Health and safety
- s.40. Personal data
- s.42 Legal professional privilege (e.g. legal advice)
- s.43 Commercial interests

Relevant Environmental Information Regulations 2004 Exceptions

- reg.12 (5) (a) International relations, defence, national security or public safety
- reg.12 (5) (b) The course of justice, fair trial, conduct of a criminal or disciplinary inquiry
- reg.12 (5) (c) Intellectual property rights
- reg.12 (5) (d) Confidentiality of public authority proceedings when covered by law
- reg.12 (5) (e) Confidentiality of commercial or industrial information, when protected by law to cover legitimate economic interest
- reg.12 (5) (f) Interests of the person who provided the information
- reg.12 (5) (g) Protection of the environment
- reg.13 Personal data

If you believe that the requested information that relates to you should not be disclosed, you need to tell us clearly which exemption or exception you think applies and why. You also need to tell us what your arguments are as to why it is not in the public interest to make this information available to anyone who may ask for it.

We need you to explain and demonstrate what negative effect it could have on you, your company or the council or taxpayer by its release. The more evidence you can give to support your argument, the better.

We can't guarantee non-release, but it will help your case if you give us as much detail as possible.

You can find more info and guidance at www.ico.gov.uk

Freedom of Information (FOIA) & Data Protection (DPA) for Elected Members

11th May 2023

Freedom of Information

- Since 2005. Applies to public authorities
- Requests must be in writing from named person/organisation. 20 working days to answer
- Presumption is release unless exemption applies e.g. commercially sensitive, personal data
- Approx. 1300 requests per year received by LCC; and
- Tiny fraction about councillors!

Freedom of Information

- If IG team asks you to locate data, please do so quickly
- Using personal email accounts for council business = still need to reveal the data held
- Deliberately withholding/destroying info after a request comes in is a criminal offence

🏠 > News

Councillor facing trial for destroying dog poo records



Freedom of Information

- Information about councillors-disclosure of Council Tax debts, parking fines etc.
- ICO/Tribunal view - councillors should be showing an example, clear public interest to disclose etc. (non-payment prevents voting at full council).
- The Council have released information previously <http://www.foi.directory/foi-reveals-nine-leicester-city-councillors-chased-up-for-unpaid-council-tax/>
- Exemption only where exceptional personal circumstances caused debt.

Data Protection

- UK GDPR - since 01 January 2021
- More protection for data subjects and larger fines.
- Needs to be read alongside Law Enforcement Directive & UK Data Protection Act 2018
- Gvt looking to replace GDPR

Personal Data

“Data which relates to a living, identifiable individual”

Under GDPR – an ‘identifier’



Special Category Personal Data

Was called Sensitive personal data

- Racial or Ethnic Origin
- Political Opinions or Persuasion
- Religious Beliefs or other beliefs of a similar nature
- Trade Union Membership or Affiliation
- Physical or Mental Health or Condition
- Sexual Life
- criminal offences

- + Under UK GDPR add:
 - **Biometric and Genetic**

Elected Member Hat 1

As a member of the Council e.g. sitting on a committee.

Covered by Council's registration,
policies, training etc.



Elected Member Hat 2

As a ward councillor, acting on behalf of constituents.

Own data controller. Responsible for data. Needs contracts, security, privacy notices etc. in place.

Liability?



Elected Member Hat 3

As a member of a political party.

Party is data controller, covered by party.



Data Protection Requests

People (constituents etc.) can ask:

- To see personal data you hold on them, who you share with etc.
- Also, for erasure, amendment, restriction.
- Could be a verbal request
- Free of charge (unless repeat/excessive)
- You have 1 month to answer (unless excessive)

Information Sharing

- Must have lawful basis e.g. Safeguarding, detection of crime etc.
- Co-councillors – need permission to share?
- Need to discuss cases with officers; but
- Don't reveal complainants details to other people-neighbours etc.

Security

- Keep personal information in locked cabinets & clear-desk policy
- Secure disposal of paper/IT
- Password attachments, use initials
- BC not CC emails, or set up group
- Check autofill, email address & attachment (S) before press send

Data Breaches

Check www.haveibeenpwned.com






Data Breach Reporting & Fines



- Report to ICO within 72 hours if **likely** to be a **risk** to an individual
- Later if 'reasoned justification'
- Business fines up to 2% or 4% of annual global turnover or **£8m or £18m...** whichever is the greater!


Consequence...





Suggested Post

 **Data Breach Compensation Claims**
Sponsored ·  

The nature of the information that was leaked in this breach makes it even more serious.
If you have been involved and want more information about what to do next - you can use the step by step guide on our website.
<https://www.hayesconnor.co.uk>

Care children list sent to taxi firms
Leicester City Council sent the spreadshe...
bbc.co.uk 

 5  3 comments  7 shares 

Elected Member Toolkit

- Data Protection Policy
- Privacy Notice
- Incident reporting template
- Written briefing
- Information Asset Register template
- Equipment loan contract

Any Questions?



Contact

Information Governance & Risk Team

4th Floor, Rutland Wing, City Hall

Tel 0116 4541300

Email: info.requests@leicester.gov.uk

Data Protection Officer: Lynn Wyeth

Draft Guidance on Redaction of Confidential Information

The Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR) provide rights of public access to information held by public authorities.

The Data Protection Act 1998 (DPA) provides an individual a right of access to their own personal information, known as Subject Access Request (SAR), held by a public authority.

The public authority can withhold certain kind of 'exempt' information. To identify information that may be exempt under FOIA and EIR, Guidance on all the exemptions is available on the Information Commissioner's website:

http://www.ico.gov.uk/what_we_cover/freedom_of_information/guidance.aspx

All staff should be aware of the categories of information that should not be released under the DPA.

Requested information must first be edited by redacting exempt material. Redaction is the separation of disclosable and non-disclosable information by blocking out or otherwise deleting words, names, phrases, sentences, paragraphs or sections of a document before release. Simply a redacted document has had personal (or possibly actionable) information deleted or blacked out; as a consequence, redacted is often used to describe documents from which sensitive information has been expunged.

Redaction should always be reversible. It should never result in permanent removal of text. Redaction should always be carried out on copies, whether paper or electronic.

If so much information has to be withheld that a document becomes nonsensical, the entire document should be withheld. In the case of paper documents the same principle should apply to individual pages.

If a large percentage of a document needs to be redacted, summarising its contents may be worth considering as a more viable alternative to redaction.

Ensure that redactions adequately prevent access to protected materials using the following practice:

Manual redactions to hard copies:

Redactions should be prepared using a black marker or redaction tape (Tipp-Ex) and then photocopied. The photocopied document should then be inspected to ensure that the redactions adequately obscure the protected information. If the photocopied document does not adequately obscure the protected information, the marker or redaction tape should be reapplied to the photocopied document, and then a photocopy of that document should be made.

Electronic redactions to an electronic document.

Redactions may be made by applying a highlighting function in a word processor in a manner that fully obscures the protected information when printed, printing the document and then scanning the printed copy of the document in Adobe Acrobat. Word processor documents should not be converted directly from a word processor into a PDF document, as this process may allow the redacted text to be accessed in

the PDF document. Other methods to redact information using Adobe Acrobat exist. Seek technical guidance regarding such methods from

Keep a record of released document with a note explaining the reasons for redaction. If multiple requests are made for the same information, this will also show what decisions have been made in prior requests.

[\(For further information please refer to Retention Guidance for Redacted Copies\)](#)

For further guidance please contact the Corporate Information Governance Team on ext. 29 7028.

Acknowledgement:

Freedom of Information Request – Electoral Registration

I refer to your request under the Freedom of Information Act regarding the Register of Electors. The registration of electors is governed by the Representation of the People Act 1983 as amended. Under Section 8 of the Act, the council must appoint an officer of the council to be the registration officer for any constituency or part of a constituency coterminous with or situated in the council's area. The appointed officer for West Berkshire is David Holling. The appointment of Mr Holling as Electoral Registration Officer is separate to his appointment as Head of Legal and Electoral Services, and although appointed by the council, the Electoral Registration Officer's responsibilities and duties are personal. An example of this is that the register of electors is deemed to be the property of the Electoral Registration Officer, not the local authority.

The Electoral Registration Officer does not carry out the duties on behalf of the local authority but in his own personal capacity. A list of public bodies and local authorities that are subject to the provisions of the Freedom of Information Act is available at the following website:

<http://www.foi.gov.uk/yourRights/publicauthorities.htm#schedule1>

As you will see, the Freedom of Information Act does not list any person appointed under the Representation of the People Act 1983. It follows that the Electoral Registration Officer, Returning Officer or any other person appointed under the Act are not subject to the provisions of the Freedom of Information Act.

I will discuss your request with the Electoral Registration Officer to see what information can be provided at his discretion and outwith the Act.

Response:
Freedom of Information Request – Electoral Registration

I refer to your request under the Freedom of Information Act regarding the Register of Electors. The registration of electors is governed by the Representation of the People Act 1983 as amended. Under Section 8 of the Act, the council must appoint an officer of the council to be the registration officer for any constituency or part of a constituency coterminous with or situated in the council's area. The appointed officer for West Berkshire is David Holling. The appointment of Mr Holling as Electoral Registration Officer is separate to his appointment as Head of Legal and Electoral Services, and although appointed by the council, the Electoral Registration Officer's responsibilities and duties are personal. An example of this is that the register of electors is deemed to be the property of the Electoral Registration Officer, not the local authority.

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I will discuss your request with the Electoral Registration Officer to see what information can be provided at his discretion and outwith the Act. A similar request was received from the BBC last September and the response as at that time is given below (information supplied at the discretion of the Electoral Registration Officer).

"Notwithstanding that there is no statutory obligation to provide this information, details of the sales of the register in the last two years are:

The full register has been sold to X credit referencing companies under Regulation 114 of the Representation of the People Regulations 2001. The charges raised for the sale of the register are in accordance with Paragraph 5 of Regulation 111 of the above regulations. The full register is only sold to Credit Referencing Agencies that can produce a valid certificate issued under Part III of the Consumer Credit Act 1974 by the Department of Trade and Industry. The sales produced an annual total income of **£Y**

There are currently (Number) registered electors on my register of which (Number) have chosen to omit their details from the Edited Register, representing (Number)% of the electorate. The edited register is freely available for purchase by the general public. The majority of enquiries

received for the purchase of the edited register never result in the sale of the register once the prospective purchaser realises that (Number)% of all electors have omitted their details. The annual income derived from the sale of the edited register produced an annual total income of **£Z**. Information regarding the edited register is provided on all registration forms."

FREEDOM OF INFORMATION ACT 2000 - FOIA

FOIA gives a global right of access to anyone, anywhere in the world to information the Council holds. They do not have to say why they want it and the Council has 20 working days to answer, subject to certain exemptions.

Requesters do not have to specify FOIA. It is for the Council to identify requests for information (RFI) and to decide what regime will be applied – they may also be covered in part or totally by the Data Protection Act (DPA) or Environmental Information Regulations (see separate guidance sheets).

The legislation is about access to information, not the documents that contain it. Unless a specific document is requested, eg a set of meeting minutes, only the requested information has to be released, not the full documents.

The Council does not treat any verbal, telephone, written or emailed Request For Information (RFI) that:

- Can be dealt with within a short period of time, (not more than two to five days);
- Does not require consultation on whether content is exempt;
- Can be easily met, for example by sending a piece of information or by directing the enquirer to a website.

If an RFI is for, or is suspected to be for, information that is or may be considered to be criminal evidence or to be used in legal proceedings, contact the relevant Assistant Head of Legal Services for confirmation and advice.

ANSWERING RFI

The law gives 20 working days from the first working day following the day the request was received to answer it.

All FOIA RFI, actions taken and supporting documents must be logged on the tracking system when they are received to give clear management oversight at all times and provide a comprehensive audit trail. This is done by the relevant coordinator – see end of document for list.

After logging the RFI the coordinator will forward it to you and tell you which pieces of legislation apply. If the request has apparent media implications the coordinator will also advise the Head of Communications and the Press Desk, and log the request as sensitive.

If you need further information from the requester to handle the RFI you should ask for it, but this must be done within the initial 20 working day period and made in writing. The 20-day period is suspended until the requester replies. The request should be closed if there is no response within three months.

The timetable for answering requests is:

- Allocate the request to your staff ensuring the coordinator within one working day and tell the coordinator who this is;

- Ask the coordinator to raise any request for clarification within 5 days of receipt of the request;
 - Give the coordinator the data needed to raise a Fees Notice within 5 days of receipt of the request – see Charges below; and
 - The coordinator receives all information relating to a request within 10 days accompanied by the business case for withholding any of the supplied information.
- NB** The coordinator must receive copies of the information it is proposed to withhold so s/he can evaluate the correctness of this and build the PIT.

When you have collated the information and /or identified the exemptions you wish to claim and built the business case against disclosure (the coordinator will help you), pass this to the coordinator who will draft the response and ask you to approve it – where the request is sensitive they will also seek approval from the Head of Communications or the Press Desk. If you agree to disclosure, authorise disclosure; if you do not, you should work with the coordinator to achieve it.

When all approvals are in place, the coordinator will forward the request, the Answer and all supporting documents to central Information Governance for acceptance and despatch. Central Information Governance will also close the request on the tracking system at this point.

INFORMATION NOT HELD

If you do not hold the information you do not have to create it – FOIA is about information the Council holds, although where existing data can be manipulated easily to create the requested information this may have to be done. In this case just tell the coordinator.

If you do not hold the information, but think another Public Authority does ask the coordinator to tell the requester and offer to re-direct the RFI. Do **not** do anything else until the applicant has replied. If there is no answer in a month, close the request. Log these requests to give an audit trail of in case of future challenge.

If the information was held, but has been deleted in accordance with the Council's Retention and Deletion Policy (see the Information Management site on Insite) you don't have to recreate it. The only exception is where it can be recovered easily from back-up. If the information has been deleted and you cannot recover it easily from backup just tell the coordinator.

CHARGES

Charges can be made for answering requests. These are detailed in the Council's FOIA Charging Policy - see the Information Governance site on Insite – and are raised through what is known as a "fees notice".

The fees notice must be sent as soon as possible, but in any case within the initial 20 working day period even if you have to estimate the cost. If you wait until you have collected the information and then issue the notice, the requester may say "I don't want this any more" and you will have wasted the

work done. The 20-day period is suspended until the requester pays the requested fee. If a fee is due – tell the coordinator who will raise the notice. The request should be closed if there is no response within three months.

EXEMPTIONS

As has been said earlier, in certain case information can be exempt from disclosure. There are three types of exemption:

Absolute - disclosure is forbidden under FOIA, although it may be possible under other legislation. There is no need to confirm or deny the Council holds the information requested. Just document the reasons, exempt the required information, disclose the balance and inform the requester why the exempt information has been withheld if appropriate;

Qualified exemptions arise when disclosure depends on the result of a PIT. In this case, you must tell the requester in writing a PIT is required and of any likely resultant delay before the initial 20 working days period expires.

All information not covered by a valid exemption must be disclosed within the initial period.

Miscellaneous

A variety of process-based exemptions occur such as **vexatious requests** and **repeated requests**. The one most used is that where it is estimated that the work will exceed a £450 ceiling, based on a nominal staff time charge of £25 an hour for all staff to find, locate and extract the requested information. If using this exemption you are required to offer to refine the request to fall under the limit.

The base rule for applying exemptions is that if you cannot release the information under the legislation because of an exemption to a single person, you cannot release it to anyone.

Exemptions **must** be tested via a formal process and the decision made by the PIT chair, currently the Head of Information Governance. No one else should decide a PIT, except for S36 decisions that can only be made by the Monitoring Office or the Chief Executive.

If a Public Interest Test (PIT) is needed more time can be claimed – the Commissioner says a further 20 working days should be adequate. To claim the extension you must notify the requester in writing, before the initial 20 working day period expires, why you need the time and when you expect to be able to answer the RFI.

Any information that is not covered by the PIT must be disclosed separately within the initial 20 working day period.

Where any exemption is claimed a section 17.1 refusal notice must be raised and the reasons for claiming the exemption clearly explained with reference to the relevant sections and sub-sections of the Act. The coordinator will help in this.

COMPLAINTS OR APPEALS

Corporate policy (see Information Governance site on INSITE) states the central Information Governance team is responsible for handling all FOIA complaints or appeals against the Council's FOIA decisions from the requester or investigations from the Information Commissioner's Office. You should pass these immediately to the central team. They must **not** be handled under any other complaints system.

APPENDIX A CHECKLIST OF ACTIONS

A1 You should:

- Always consider what advice if any, you can give to help the applicant;
- Identify who should handle RFI;
- Advise and assist requestors if RFI are for information the Council does not hold;
- Check if the information is in the Publication Scheme. If it is, advise the applicant accordingly and close the request;
- Log the request on the corporate VQSM request tracking system;
- Answer the request in 20 working days. If it will take more than 20 working days, tell the applicant in writing before the 20 working days deadline expires;
- Estimate costs, issue a fees notice and take payment before starting any work;
- Ask colleagues for all the information you need to answer the request allowing sufficient time for you to meet the deadline;
- Consider if you should reply in a language other than English;
- Apply exemptions or exceptions if relevant;
- If a PIT is required, disclose all information not covered by a valid exemption/exception immediately and inform the applicant about the PIT and resultant delay likely, in writing before the 20 working days has expired;
- Prepare all relevant PIT paperwork and organise the Panel;
- Supply required information to panel members in good time (at least 3 clear working days in advance of the panel);
- Ensure the PIT submission considers the public interest fully;
- After a decision has been made on disclosure, if further information or arguments arise subsequently, re-convene the panel if appropriate;
- Ensure PIT decisions are followed.

A2 You should not:

- Answer repeated or vexatious requests;
- Answer requests for information that are already in the Publication Scheme (although you should advise and assist the requester accordingly);
- Process a request where a fee is chargeable until the fee has been received;
- Tell anyone they are exempt from charges;
- Change, conceal or delete information to avoid releasing it; or
- Refuse to release information that is not covered by a valid exemption.

NB The last two actions are criminal offences under the Act and incur a personal liability punishable by a maximum fine of £5,000.00



Freedom of Information

What does it mean for us?

Introductory Training Session from
the Information Commissioner

Date



Freedom of Information Act 2000

- Passed November 2000
- Comes into force in stages
- Fully in force from January 2005
- Covers entire public sector
- Promotes greater openness and accountability



The Act – In summary:

- Applies to public authorities
- Establishes statutory right to information
- Sets out exemptions from that right
- Provides for the release of exempt information in the public interest

The Act – In summary (contd):

- Requires public authorities to produce publication schemes
- Requires 2 statutory Codes of Practice
- Establishes Information Commissioner
- Amends Data Protection Act 1998



The reality of FOI:

- Covers all information ‘held’, regardless of form in which recorded
- Fully retrospective
- Anyone can apply for information
- All written requests for information to be dealt with in 20 working days*
- There is **no** exemption for embarrassment
- There are implications for the private sector



Our duties as a public authority:

- Adopt Publication Scheme
- Deal with requests for information

The timetable

Publication Schemes

November 2002	Central Government Houses of Parliament Welsh Assembly 'Code' bodies (NDPBs)
February 2003	Local Government
June 2003	Police, Prosecuting Bodies
October 2003	NHS



The timetable (contd):

February 2004 Education, remaining
NDPBs, publicly-owned
companies

June 2004 Remaining public authorities

The right to request information:

1 January 2005

What is a publication scheme?

- A commitment to publish certain information
- Document setting out:
 - ‘classes’ of information
 - manner of publication
 - whether a fee applies
- must have regard to public interest
- ongoing process
- provision for ‘model’ schemes



Why have a publication scheme?

- The law says so
- There are benefits for us, as well as the public
- It helps us prepare for requests



Publication schemes: What do we need to know?

- That the scheme exists
- Why it is necessary
- What it covers
- Who the scheme coordinator is
- How to advise and assist the public
- That our feedback is valuable for development

New rights for the public:

- To be informed in writing whether information held (“duty to confirm or deny”), and
- If so, to have information communicated

subject to ...



Right to information, subject to:

- Fees (Regulations)
- Cost ceilings
- Vexatious or repeated requests
- Further information provided
- The exemptions



Requests for information

- Must be in writing
- Must include name and address of applicant
- Must describe information requested

Applicants **do not** need to refer to the Act or state they are making a request for information.



What about personal information?

- Requesting information about yourself
- Requesting information about others



Dealing with requests: What do we need to know?

- How to recognise a request for information
- That we have a duty to provide advice and assistance (see ‘Access Code’)
- That our authority has 20 working days to respond (extended where required to consider public interest)

contd ...

What do we need to know?

...contd

- That information must be provided in the form requested, where ‘reasonably practicable’
- What our procedure is, for dealing with requests and who is responsible for this.
- That it is a criminal offence to alter, deface, block, erase, destroy or conceal information to prevent disclosure



What about the Environmental Regulations?

- What do the Regs cover?
- How do they fit with FOI?
- Similarities
- Differences



Who will be using FOI and the Regs?

- The public
- The media
- Pressure groups

Anyone worldwide



What if they are not happy with our response?

- Internal complaints procedure
- Information Commissioner:
 - promotes compliance
 - enforces the law
 - informs the public
- Information Tribunal



Records management: Questions to ask

- What information do we hold?
- Can we access information easily?
- Do we record information legibly?
- What does the 'Records Management Code' require?
- What does our policy on records management say?

Remember!

- Third parties may have a right to access the information we record
- It is a criminal offence to tamper with existing records that have been requested for disclosure
- There is no exemption for embarrassment
- **Create records with an eye to other people seeing them**

The key to FOI

- Commitment to openness from the top
- Good record keeping
- Effective communication within the authority

Guidance and further information:

www.informationcommissioner.gov.uk



The Freedom of Information Act 2000 (FOIA)

Things you need to know

Information Governance & Risk
Leicester City Council





The Law



- **FOIA** – applies to NON-PERSONAL information held by the Council.
- It is not GDPR/Data Protection(but linked)!
- The main principle - people have a right to know(and to be informed in writing and receive a copy of the information they request), unless there is a good reason for them not to.
- There is a presumption or assumption in favour of disclosure.
- The Act is purpose and applicant-blind
- The Information Commissioner (ICO)-regulator



What is covered?



- Information held by the Council (at time of request)
- Information stored by the Council in off-site servers/cloud storage
- Information held on the Council's behalf by other organisations (i.e. offsite-storage, information provided to lawyers for litigation)

What is a valid request?



- To a public authority (LCC)
- In writing
- Real name – organisation name
- Address – can be email
- Social Networking



Obligations for LCC



- Respond within 20 working days
- Can only extend if Public Interest Test needed
- Publish proactively compliance statistics (Section 45 Code of Practice)
- Answer Appeals/complaints
- Advise and Assist requesters (Section 16)
- Publication Scheme-what is accessible to requesters already!

Dealing with FOIA



- Recognise a request-something you would not normally deal with/you would not give out as business-as-usual
- Pass to Information Governance & Risk ASAP
info.requests@Leicester.gov.uk
- IG&R – will log, collate and prepare/issue a response

Dealing with FOIA (2)



- You may be asked to gather information
- Consider:
 - ❖ Do we hold it?
 - ❖ If so, is it publicly-available already?
 - ❖ If not, how long would it take to get it together?
 - ❖ Is it sensitive?
 - ❖ If so, why-think about this!

Dealing with FOIA (3)



- When you have done this-inform IG&R; and
- Provide the information; or
- A statement that it is not held; or
- Estimated cost of recovery-£25 per hour to do so up to £450; or
- An explanation of why it cannot be given out!



Reasons to refuse



- Part 1 of the Act
- “Administrative” reasons to refuse;
- Not held-Section 1(1)
- Cost of compliance (Section 12)
- Vexatious/repeated (Section 14)

Reasons to refuse (2)



- Part 2 of the FOIA
- Exemptions to disclosure-reasons under FOIA not to disclose
- 2 types of exemption:
 - ❖ Absolute-just apply and document
 - ❖ Qualified-Public interest test required

Absolute exemptions



If they apply, document and tell IG&R:

- **Section 21** – Information Accessible to the applicant by other means-via Public register/internet etc.
- **Section 32** - Court Records-go to Court Service
- **Section 40** - Personal Data (of the requester, or others-staff, public etc.)
- **Section 44**-Statutory prohibitions-other law(s) says you cannot disclose



Qualified Exemptions



If they apply, advise IG&R:

- **Section 22**-Future Publication, linked to Section 21
- **Section 30/31**-Investigations/Law Enforcement-disclosure could prejudice this
- **Section 38**-Health & Safety-harm via disclosure
- **Section 42**-Legal Privilege-legal advice
- **Section 43**-Commercial Interests-contracts/trade secrets

Other laws



- **GDPR/DPA 2018**-persons own data exempt under FOIA, other peoples also if breaches DPA to disclose
- **Environmental Information Regulations 2004**-similar, relates to environmental information
- **Protection Of Freedoms Act 2012/ Re-use Regulations**-proactive publication
- **INSPIRE**-geospatial data
- **Transparency Code of Practice** – datasets (spending), Section 21, disclosure log



What happens next?



- **IG&R will draft** response with information/refusal and right of appeal;
- **Send to you/Director** for approval
- **Amend/challenge**; and
- **Issue by Day 20**; and
- **Close request.**

What happens next?(2)



- **Internal review**-requester can challenge response;
- **20 working days to respond**-accept, reject or partially accept challenge; then
- **ICO**-next step; and
- **Information Tribunal**-Final stage



Actions for you



- **Deal** with requests for information
- **Know** what you hold
- **Be able to find it** if required
- **Read** guidance
- **Explain** why it cannot be given out



Questions?



Information Governance & Risk

4th Floor, Rutland Wing, City Hall

Tel 0116 4541300

Email: info.requests@leicester.gov.uk



Useful resources



The Information Commissioners Office:

- <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/>

Leicester City Council:

- <https://www.leicester.gov.uk/your-council/how-we-work/data-protection-and-foia/freedom-of-information/>
- <http://interface.lcc.local/our-organisation/corporate-resources-and-support/legal-coronial-registrars/information-governance/>





FREEDOM OF INFORMATION ACT 2000

- What is Freedom of Information?



BACKGROUND

- Labour party commitment to FOI;
- “Your right to know” - December 1997;
- Progression through both Houses of Parliament;
- Royal Assent November 2000;
- Information Commissioner January 2001.



INTRODUCTION

- What impact does the Act have on Public Authorities?
- Right to access information;
- Publication schemes;
- Forward planning.

WHEN DOES THE ACT START?

- Publication Schemes:
 - Central government and closely related - November 2002;
 - Local government - February 2003;
 - Police, CPS, Armed Forces - June 2003;
 - Health Service - October 2003;
 - Schools and Universities - February 2004;
 - Remaining - June 2004;
- Individual rights of access - January 2005.



PUBLICATION SCHEME

- A public authority must publish and maintain a publication scheme
- Schemes list classes of information which are published or intended to be published, how they are to be published (e.g. internet), Model schemes can be produced by the Commissioner for adoption by a public authority
- Publicity about the publication scheme is the responsibility of the public authority



FOIA INFORMATION & RECORDS MANAGEMENT

- Review resources – Corporately and Departmentally;
- Review information management systems within departments, if not done so already;
- Are we compliant with the Lord Chancellor's COP on the Management of Records under S46 of FOIA 2000?

WHO WILL BE SUBJECT TO THE ACT?

- Wide definition of “public authority”
- Any listed public body (Schedule 1):
 - Local government, police, health, public education
 - NDPBs (e.g. Commissioners)
 - Government Departmentsand
 - Publicly owned companies
 - Organisations designated by order (e.g. contractors of an authority)



WHAT WILL THE ACT DO?

Provides for:

- presumption of right of access to any information held by a public authority, the Act is retrospective;
- publication schemes;
- a number of absolute exemptions and others where disclosures may be made in the public interest;
- an enforcement mechanism and an independent regulator;
- Codes of Practice.



REQUEST FOR INFORMATION (THE BASICS)

Formal request must:

- be in writing;
 - includes electronic means
 - legible
 - capable of subsequent reference
- contain the correspondence address and name of the applicant;
- describe the information required.



EXEMPT INFORMATION

- “Absolute exemptions” - the exempt information is not subject to a public interest test;
- “Non-absolute exemptions” the public authority has to weight the public interest considerations “in all circumstances of the case” before applying the exemptions so that the right of access does not apply. The starting position is that the public interest is served by disclosure;
- The public authority may have to show why the public interest is served by applying the exemption.

RESPONSE TO REQUESTS

- Authorities have to:
- say whether they hold information of that nature (the duty to confirm or deny);
- communicate the actual information;
- (these two elements are treated separately);
- satisfy the request within 20 working days unless the information is unclear or an exemption needs to be considered.

WHERE DO WE BEGIN?

There are 5 areas to address, both
Corporately and Departmentally:

- Leadership and Policy;
- Internal Training and Awareness;
- Information and Records Management;
- Involving Customers and Stakeholders;
- Systems and Procedures



LEADERSHIP AND POLICY

- Appoint an Information Champion;
- Appoint a Project Team;
- Assess Preparedness;
- Draw up a tailored Project Plan for the Authority;
- Review and Evaluate

TRAINING & AWARENESS

- Develop an internal communications strategy to ensure that all staff are aware of the Act;
- Assess training needs;
- Draw up and implement a training plan;
- Review progress on training and follow up as necessary.

Information & Records Management

- Review Records and follow the National Archives Records Management MAP;
- Appoint and Train someone as records manager;

CUSTOMERS AND STAKEHOLDERS

- Analyse what is published now, what is in the publication scheme, and what could to in it;
- Develop Networks Nationally and Locally;
- Design and implement an external communications strategy;
- Contact relevant third parties to:
 - Inform them of new responsibilities
 - Develop a policy on new consultation periods

System and Procedures

- Review document structure to facilitate release under the Act;
- Plan specific guidance and administrative procedures that are needed to comply with the Act (duty to assist, complaints etc);
- Develop procedures and examine systems for monitoring requests for information made under the Act.



INFORMATION COMMISSIONER

The Information Commissioner's role is to:

- Deal with complaints;
- Serve enforcement, information or decision notices;



Guidance On How To Handle Freedom of Information Requests

Leicester City Council

Version Control:

Version	Date	Who	Changes
1.0	25 th November 2011	Lynn Wyeth	Original draft
1.1	28 th November 2011	Lynn Wyeth	Amendments by John Doyle

This Guidance relates to all requests for information under the Freedom of Information Act (2000). Any individual is entitled to ask the Council for information we may hold, regardless of where they live.

It is important that, in handling requests, Divisions adopt a consistent approach. The purpose of this Guidance is to assist Divisions to determine what they must do to comply with the legislation.

What is a Freedom of Information request?

All requests for information to The Council are Freedom of Information (FOI) requests and are covered by the legislation. To log every request would however create a huge bureaucracy. The Council tries to answer most requests as 'business as usual', just as we would have done before the FOI Act came into force. If however any of the following apply, the request should be logged as a formal FOI request with the central IG Team.

- The request formally states it is a request under FOI
- The information requested may have to be exempted from release
- It is a very complex and large cross divisional request that needs co-ordinating centrally

NOTE: Requests asking for opinions, how decisions were made, or how the Council does something or are going to do something are **not** FOIA requests and should be sent to the relevant division to deal with as a normal service request. FOI only covers specific information held that the requester has clearly identified.

Time to respond

- You have **20 working days** to respond. (The only time you can extend this time is if you need to consider if any exemptions apply and a public interest test has to be done.)
- If you do not respond in this time, please be aware that the requester has a right to ask for an internal investigation into why, and they can then refer a complaint to the Information Commissioner's Office (ICO).

Accepting a valid request

The request must be in writing. This can be by email or fax as well as by letter, or even via The Council's official social network sites.

The requester must supply a real name and a return address. This can be an email address.

All FOI Requests must be logged with the central IG Team, New Walk Centre or by emailing foia@leicester.gov.uk

Not Protectively Marked

Make sure you check all post and emails, and generic email addresses and official Council social network sites daily in case there are requests for information.

Check letters carefully. FOI requests are often included in complaints or service requests.

Also note that questionnaires asking for information need to be responded to as they are technically covered by the FOI Act too.

Charging a fee

If a request will take over 18 hours to answer the Council can decide to refuse the request or charge at £25 per hour. The Council has decided its policy is to refuse these requests and therefore does not charge for FOI requests.

For those requests that are under 18 hours but result in large amounts of paper to be sent by post, the Council can charge 'disbursements' e.g. 10p a sheet for photocopying and postage. A fees notice has to be issued. Contact the central IG Team for advice. More details about charges can be found at:

<http://www.leicester.gov.uk/your-council-services/council-and-democracy/data-protection-and-foi/freedom-of-information/>

If there is a service that we currently charge for and advertise these costs on the website e.g. fees for copies of planning applications, we are still allowed to charge reasonable costs in this way. If you do not already publish your fees on the website however, you cannot charge if a FOIA request is submitted.

Please note, requesters can come and inspect environmental information for free! Take advice from the central IG Team.

Duty to advise and assist

If the request will take over 18 hours to answer you must demonstrate how you have estimated this e.g. we will have to look at 450 manual records and it will take 15 minutes per record.

You have a duty to try and advise the requester what information you can supply within the 18 hours and to help them to refine their request wherever possible.

Unclear requests

If Divisions receive a very general request which doesn't properly identify the information the requester wants, the FOI Act allows you to seek more details in order to locate the information. If you seek clarification from the requester, the 20 day clock does not start ticking until they clarify their request.

Interpreting the request

Only answer exactly what the requester has asked for. Council resources are scarce and the numbers of FOI requests are increasing. Be very clear about what information is being requested and supply only that. Do not provide more than is needed, unless you want to add contextual information to help explain anything you release to the requester.

Format in which to send the information out

The ICO have ruled that if a requester asks for the information in a particular format you have to consider doing so. If they ask for electronic version rather than a paper version, you will be expected to comply with this. However, if they ask for a .csv file and you only have a word document, you do not have to create a new .csv document; it is sufficient that you are sending it in some sort of electronic format.

Exemptions

There are several reasons that information may not be released, here are the ones we consider the most at The Council.

- Section 21: Information accessible by other means
- Section 22: Information Intended For Future Publication Exemption
- Section 27: International relations
- Section 30: Investigations And Proceedings Conducted By Public Authorities
- Section 31: Law Enforcement
- Section 36: Effective Conduct of Public Affairs
- Section 38: Health And Safety
- Section 40: Personal information relating to a third party access request
- Section 41: Information provided 'In Confidence'
- Section 42: Legal Professional Privilege
- Section 43: Commercial Interests

Contracts

The Council now has to publish all contracts as part of the Government's transparency agenda so less information can be withheld under s43. If there is any commercially sensitive information in a contract, there needs to be a specific schedule stating the information that should not be released, in addition to the normal FOIA clause in the contract. If there is no extra schedule it is more difficult to exempt any information in a contract. Service areas should take advice from Legal Services in drawing up contracts.

Public Interest Test

In some cases, if we do not want to release information that we think is covered by an exemption, we have to consider the public interest. This is not something that the public just find interesting e.g. the latest big news story, but is an issue that actually has a detrimental or positive effect on the taxpayer or the public. Sections 22, 30, 31, 36, 38, 42 and 43 are all subject to a Public Interest Test (PIT). A PIT form has to be

Not Protectively Marked

completed showing the arguments for and against release and why you think one outweighs the other. The Head of Information Governance has to sign this off, and Legal Services will also need to be consulted.

You can take an extra 20 working days if a PIT is needed.

If you have any doubts about what you can release, take advice from the central IG Team.

Redaction

If you do decide some information should not be released, it should be carefully blanked out ('redacted').

Screen out duplicate information, e.g. only print out the final email in a long email trail if it contains all the previous emails too.

Black marker pen will not redact suitably. Words can be seen through the ink unless you photocopy twice. If you do not have redacting software, we would recommend you invest in Acrobat Professional 10 which allows you to black out information in your .pdf document. If you do not have the software we recommend you use the Tipp-Ex pocket mice and then photocopy the document.

Authorisation

All FOI requests which are centrally logged must be signed off by the Divisional Director before release.

Any requests which are from known journalists or media companies, or are politically sensitive, must also be signed off by the Head of Communications / Press Office. If you receive a request from the Leicester Mercury, contact the Press Office.

Divisional Directors are responsible for briefing their Cabinet leads on any sensitive requests.

Any requests about Councillors, and the responses, should also be sent to the relevant councillors.

Answers published on the Internet

All answers to FOI requests are now published on the Council website. Divisions should check if the information has been sent out before and direct requesters to the website if it has.

Divisions should also proactively publish as much information as possible on the website as a matter of course to reduce the number of FOI requests.

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Repeat / Vexatious Requests

If a requester has previously requested and received the information you may not have to send it again until a 'reasonable' time has elapsed.

If you have a serial requester and you believe that the requests fall under any of the following, they may be 'vexatious'.

- Can the request fairly be seen as obsessive?
- Is the request harassing the authority or causing distress to staff?
- Would complying with the request impose a significant burden in terms of expense and distraction?
- Is the request designed to cause disruption or annoyance?
- Does the request lack any serious purpose or value?

Take advice from the central IG Team.

Records Management

All staff are urged to practice good housekeeping when it comes to managing information. Regular weeding and destruction in line with the retention and disposal policy (which can be found on Insite) should be undertaken.

Emails that need to be kept should be saved as records in structured folders rather than kept as ephemeral emails in staff inboxes.

Do not destroy information after the request has been received. This is a criminal offence.

Keep a record of what was issued

We must always keep a full copy of the original information and a copy of the information that was actually sent to the requester, and our reasons for redacting any information. If there is an appeal or a complaint to the Information Commissioner's Office we need a full record of what was issued and why. Copies of the information released and withheld will be kept by the central IG Team.

Performance

Performance information is reported to SMB, Directors and councillors on a weekly basis.

Our annual performance statistics will also be published on The Council website. If we fall below 85% of requests being answered in 20 days, the ICO will place us on a watch list and potentially consider enforcement action against us.

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More information

The central IG Team, New Walk Centre (foia@leicester.gov.uk) on 0116 2527028 will be able to offer help and advice to any member of staff handling a FOI request.

Template letters for responses and further guidance can be found on Insite at:

<http://insite.council.leicester.gov.uk/e-handbook/information-governance/foia-and-eir/foia-and-eir-guidance>

Lynn Wyeth, Head of Information Governance, November 2011

How long do I have to carry out an internal review?

Freedom of Information Act 2000

Good Practice Guidance No. 5

Time limits on carrying out internal reviews following requests for information under the Freedom of Information Act 2000

The Information Commissioner's Office (ICO) has produced this guidance as part of a series of good practice guidance designed to help understand and apply the Freedom of Information Act 2000 (FOIA).

FOIA makes reference to complaints procedures at section 45 (concerning the Code of Practice) and at section 50; both relate to circumstances where an applicant wishes to complain about the response of a public authority to a request for information. The reference at section 50 concerns the discretion that the Commissioner is allowed to exercise not to make a decision in cases where a complainant has not exhausted a public authority's complaints procedure (also referred to as internal review). The Commissioner considers it important that internal reviews are completed as promptly as possible and so is introducing this guidance setting out what he considers to be a reasonable timescale for public authorities to undertake an internal review following a request by an applicant.

Section VI of the Section 45 Code of Practice states that "each public authority should have a procedure in place for dealing with complaints In relation to its handling of requests for information." This comprises desirable practice for the purposes of FOIA, but it should be noted that under the Environmental Information Regulations it is a requirement for public authorities to consider representations made by applicants for information. Consequently, most public authorities under FOIA should already have the procedures in place to allow them to perform an internal review. It is also important to note that Refusal Notices must include either details of the public authority's complaints procedure or a statement that it does not have one.

This will assist the Commissioner in determining whether or not an applicant, on making a complaint under section 50, has exhausted the complaints procedure of the public authority.

Time limits on carrying out internal reviews

The spirit of the Code is that internal reviews should be completed as soon as possible. For example:

- a complaints procedure should be designed to allow prompt determination of complaints (para 39)
- target times should be set for dealing with complaints (para 42).
- the code also recommends that the target times are reviewed regularly and that each authority should publish them together with information on its success in meeting those targets.
- there is also an implied recommendation, supported by guidance issued by the Department for Constitutional Affairs, that the complainant should be kept fully informed throughout the review process.

The Commissioner supports these recommendations and intends, from time to time, to monitor conformity with them.

Some other factors to be noted are as follows:

- FOIA requires a request to be complied with “promptly and in any event not later than the twentieth working day following the date of receipt” which suggests that internal reviews should also be completed promptly.
- Internal review is an important second opportunity for the public authority to engage with an applicant and there are clear benefits to both parties if the review is concluded within a reasonable timeframe.
- The Freedom of Information Act (Scotland) 2002 stipulates an internal review should be completed within 20 working days following receipt of the request for review.

In view of all the above the Commissioner considers that a reasonable time for completing an internal review is 20 working days from the date of the request for review. There may be a small number of cases which involve exceptional circumstances where it may be reasonable to take longer. In those circumstances, the public authority should, as a matter of good practice, notify the requester and explain why more time is needed.

In our view, in no case should the total time taken exceed 40 working days. In such cases we would expect a public authority to be able to demonstrate that it had commenced the review procedure promptly following receipt of the request for review and had actively worked on the review throughout that period.

Time limits on carrying out internal reviews

Some public authorities have complaints procedures which have a number of stages or levels. The Commissioner does not expect an internal review of a response to an FOI request to have more than one stage. Given that this is a review of a statutory process with clear rights for requesters and obligations on public authorities, a degree of formality is expected.

Enforcement

The Commissioner wants to ensure that a complainant has exhausted a public authority's internal review procedure, but at the same time the complainant should not be unreasonably delayed in having his complaint considered under section 50. Equally, it will be beneficial to both complainant and public authority if an internal review leads to a prompt and satisfactory outcome such that a subsequent complaint to the Commissioner is not required. The Commissioner has therefore set out above what he regards as "reasonable" in terms of the timescale for completing an internal review. He is keen to ensure that the time limit is adhered to and that there are no unreasonable delays in carrying out reviews.

Internal reviews are referred to in the Code of Practice, and significant or repeated unreasonable delays in dealing with internal reviews may lead to monitoring by the Enforcement team and, in some instances, structured intervention, for example, the issuing of a Practice Recommendation. The Commissioner's [Enforcement Strategy](#) provides more detail about practice recommendations and structured intervention.

More information

If you need any more information about this or any other aspect of freedom of information, please contact us.

Phone: 0303 123 1113

Website: www.ico.gov.uk

PUBLIC INTEREST TEST RECOMMENDATION

FREEDOM OF INFORMATION ACT 2000

ENVIRONMENTAL INFORMATION REGULATIONS

2004

Reference Number:

PART 1 General Instructions and Guidance

Both the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR) require Public Authorities to operate openly. The requirement is for any request to be answered unless there is either:

- An absolute exemption that prohibits release. **NB** There are no absolute exceptions for the EIR; or
- There is a specific Public Interest covered by either a FOIA exemption or an EIR exception (see section 2.1)

Section 17 of FOIA covers the refusal of requests for information under FOIA. Release of any information covered by a qualified exemption is subject to a Public Interest Test, "PIT". The EIR require that all exceptions are the subject of a PIT.

Where the Public Interest in withholding the information is greater than that in releasing it the applicant must be told the reasons for this, unless this in itself would mean releasing the information in question.

Where departments decide an absolute exemption applies (these are covered by sections 21, 23, 32, 34, 40 (sub-section 1 all the time and sub-section 2 in specific circumstances), section 41 and section 44) the reason(s) for applying the exemption should be documented and the action agreed with IMC. Departments should take advice from a lawyer in Legal Services if they are in any doubt as to the application of the exemption. IMC should retain a copy of the information in question, the documented decision and any supporting correspondence in case of any future challenge.

To apply an exception or non-absolute exemption a PIT is required. These should be conducted:

- In good time to ensure that the twenty working days legislative deadline for providing information is met; and
- Through correspondence using the standard *pro forma* rather than formal meetings although team members may meet where they consider this appropriate:

Decisions and the reasons for them must be recorded fully on the standard *pro forma* and signed off by all people identified on the form.

Departmental co-ordinators are responsible for:

- co-ordinating the PIT process;
- copying all documents needed for both the pre-PIT and PIT meetings and ensuring all relevant parties receive this information at least two clear working days before any decision is required at either meeting;
- advising the applicant of the PIT decision; and
- sending her/him all appropriate documentation, this includes undertaking any necessary redaction.

NB If a PIT is conducted via e-mail it is acceptable to use electronic copies of any information that is held electronically. Where only non-electronic copies exist these must also be circulated.

All associated documentation must be attached to this *pro forma*.

The completed *pro forma* and all attached documentation should be passed to IMC for retention in case of future challenge.

IMC should record the decision on the FOIA request register.

PART 2 DOCUMENTING THE DECISION

2.1 Details of the Request for Exemption/Exception:

To be completed by the departmental Co-ordinator and/or her/his representative who should:

- clearly identify on this *pro forma* which exemption(s) or exception(s) is/are being sought for which information and why;
- use the lists at sections 2.2 and 2.3 of this *pro forma* to identify the non-absolute exemptions/exceptions which it is thought apply;
- detail the exemption(s)/exception(s) being claimed and the reasons for this in the chart in section 2.4 of this *pro forma*;
- detail the business case for non-disclosure in section 2.5 of this *pro forma*; and
- ensure that advice is taken from a lawyer in Legal Services where there is any doubt about the action proposed. The lawyers' advice should be documented at section 2.6 of this *pro forma*. All Legal costs will be charged to the department.

NB Any exemption claimed under section 36 is to be handled under the separate section 36 procedure.

2.2 FREEDOM OF INFORMATION EXEMPTIONS

Section 22 Information Intended for Future Publication

Section 24 National Security

Section 26 Defence

Section 27 International Relations

Section 28 Relations Within the United Kingdom

Section 29 The Economy

Section 30 Investigations and Proceedings Conducted by Public Authorities

Section 31 Law Enforcement

Section 33 Audit Functions

Section 35 Formulation of Government Policy, etc

Section 36 Prejudice to Effective Conduct of Public Affairs - *not applicable to this pro forma but included for completeness sake.*

Section 37 Communications with Her Majesty, etc Honours

Section 38 Health and Safety

Section 39 EIR - see section 1.2 of this Appendix

Section 41 Information Provided in Confidence

Section 42 Legal Professional Privilege

Section 43 Commercial Interests

2.3 ENVIRONMENTAL INFORMATION.

The following non-absolute exceptions may be claimed for requests for information made under the Environmental Information Regulations.

- 1 The information requested is not held by the Authority**
- 2 The request is manifestly unreasonable**

- 3 The request is too general. Please ensure the advice and assistance as defined in section 3.12 has been provided;**
- 4 The request concerns internal communications;**
- 5 Disclosure would adversely affect:**
- ❖ Confidentiality of the Authority's proceedings;**
 - ❖ International relations, public security or national defence;**
 - ❖ The course of justice, the ability of any person to receive a fair trial or the ability of the Authority to receive a fair trial;**
 - ❖ Confidentiality of commercial or industrial information;**
 - ❖ Intellectual property rights;**
 - ❖ Confidentiality of personal data/files;**
 - ❖ The interests or protection of any person who supplied the information requested on a voluntary basis;**
 - ❖ The information relates to the protection of the environment.**

2.5 Departmental Business Case For Non-disclosure

Signed:
Name:
Department:
Date:

2.6 Advice from Legal Services

To be completed by a lawyer and identify why the request for exemption/exception does or does not meet the requirements for satisfying a Public Interest Test. All relevant documentation should be attached.

Release of information is/is not recommended (Delete as appropriate) because:

Signed:
Name:
Title:
Date:

3 Advice from Information Management & Contracts

To be completed by an Information Consultant

This should identify whether the exemption is one included in the legislation and recommend on whether the request should or should not be approved. All relevant documentation should be attached.

Release of information is/is not recommended (Delete as appropriate) because:

Signed:

Name:

Date:

Public sector salaries: how and when to disclose

Freedom of Information Act 2000

When should salaries be disclosed?

The Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR) provide rights of public access to information held by public authorities. This is part of a series of guidance notes produced to help public authorities understand their obligations and to promote good practice.

This guidance gives advice to public authorities on when they should reveal the salaries paid to staff. In particular, it explains the factors to consider when deciding whether exact salaries can be disclosed rather than salary scales.

Overview

There is no one rule which can be applied in every case. However, the following guidelines may be useful.

- Salary scales should usually be published as a matter of routine.
- Disclosure should only be to the extent necessary to fulfil a legitimate public interest. This may involve narrowing down advertised scales, for example to the nearest £5000. Only in exceptional circumstances is disclosure of exact pay likely to be justified.
- More senior staff who are responsible for major policy and financial initiatives can expect greater scrutiny of their pay than more junior employees. It will nearly always be unfair to disclose the exact salaries of junior employees.
- There could be factors that weigh in favour of greater disclosure, such as legitimate concerns about corruption or mismanagement, or situations in which senior staff set their own or others' pay.
- Specific individuals' concerns should be considered when determining whether the disclosure is justified.
- Commercial interests may also be relevant.

Routine disclosure

Public authorities publish certain information routinely in accordance with the Information Commissioner's model publication scheme. This should include significant financial information, including some details about staffing costs. For most authorities, this should include the organisation's salary scales or bands.

Some authorities may be required by law to include the remuneration of their most senior office-holders or employees in their public accounts.

Others may choose to publish this information voluntarily. These authorities should make sure that affected individuals are aware in advance that this will happen.

For further information about making this information routinely available, please visit our [Publication scheme](#) webpage.

Personal information

Information which is not released routinely can still be requested under the FOIA. Section 40(2) of the FOIA provides an exemption from disclosing information about identifiable individuals where it would breach the Data Protection Act 1998 (DPA). This does not mean that all personal data is exempt from release; an authority relying on this exemption will need to explain how the disclosure would contravene one of the data protection principles.

The purpose of the DPA is to protect people's private information and to ensure that it is handled properly. Personal information must only be released if there is a genuine reason to disclose and it would not involve unfairness to the individual. A public authority will generally have to satisfy itself that:

- the disclosure would not be unfair or outside the reasonable expectations of the individual;
- there is a legitimate public interest in disclosure, and the disclosure is only to the extent necessary to meet this public interest; **and**,
- the interest in disclosure outweighs any detriment to the individual's privacy or other rights and legitimate interests.

These three stages are explained below. For further detail on applying the exemption, see our guidance on [The exemption for personal information](#).

1. Reasonable expectations

Those who are paid from the public purse should expect some information about their salaries to be made public. However, salary information also relates to their personal financial circumstances and this deserves some protection. You should carefully consider a number of factors before deciding to release exact salaries.

A. Should the individual expect their role to be subject to public scrutiny? The level of salary itself is not the determining issue. Factors to consider include:

- how senior their role is, including their level of accountability and personal responsibility;
- whether they have a public profile or public-facing role; and,
- whether they are responsible for major policy decisions or expenditure of public funds.

These factors should be considered together; there is no hard-and-fast rule.

Example:

The Commissioner found that the exact salaries of specialist registrars employed by University Hospital Birmingham NHS Trust should not be disclosed. He found that as “employees who interact with the public” they “should expect some personal data about them to be released” but that they should expect less scrutiny than senior executives who are “responsible for policy decisions affecting the public and the expenditure of public funds”. (ICO decision notice [FS50092819](#), February 2007)

B. Should the individual reasonably expect that their salary could be released in response to an FOI request?

- The fact that an individual has not been warned that their salary could be disclosed under FOI will not necessarily be a bar to disclosure.
- You should take into account whether salaries for this type of post are generally made public.

Example:

The Commissioner decided that BBC Northern Ireland did not have to release the fee paid to a presenter. The fee had been decided in confidential negotiations in accordance with the standard practice in the industry, and was therefore properly treated differently from the salary of a senior employee. (ICO decision notice [FS50067416](#), January 2008).

C. Would it be intrusive to release an exact salary, or to give the salary to within a smaller range than the advertised band?

Where a fairly narrow salary scale is included on job adverts or disclosed to candidates, releasing an exact salary may not lead to increased intrusion.

2. Legitimate public interests

There will always be some legitimate public interest in knowing how public money is spent, how public sector salaries compare with those in other areas, and how money is distributed between different levels of staff. However, in many cases, these interests will be met by the routine disclosure of salary scales.

There will be situations in which the advertised salary band is not sufficient to answer these legitimate questions. This could arise when:

- the advertised bands are very broad and staff may start at different points within the band;
- the mechanism for determining pay or salary progression within bands is not transparent; or,
- the pay scales do not disclose the full cost to the authority, for example, because there is a significant element of performance-related pay or other bonuses.

In such cases, it may be appropriate to consider releasing the approximate amount paid to an individual, for example, to the nearest £5,000.

Remember that you must still take into account the other fairness considerations such as reasonable expectation.

3. Unfair intrusion, harm or distress

Where there would be a legitimate value in disclosing the exact salary, you must also decide whether the benefits are proportionate to any potential harm, distress or intrusion to the individuals.

In some cases, releasing the exact salary would be significantly more intrusive than approximate salaries, for example because:

- the exact salary is individually negotiated rather than determined according to a known formula;
- the salary includes a certain amount of performance-related pay, and would reveal the outcome of the individual's performance review; or
- it could have a detrimental effect on relationships between colleagues.

You should also take into account specific objections from individuals about the effect on their private life, for example prejudice to their interests in ongoing financial or legal negotiations. You should only take into account **unwarranted** harm or distress; information which would expose wrongdoing should not be withheld on these grounds.

You should carefully balance the additional intrusion of releasing an exact salary against the additional value to the public. Where the additional intrusion would be unwarranted, you may still be able to release approximate salaries or salary scales.

Example:

The Commissioner determined that the BBC should disclose the salary band of the Controller of Continuing Drama, but not his exact salary, which was individually negotiated. He found that the legitimate public interest outweighed the intrusion of disclosing the salary band but not the additional intrusion of disclosing an exact salary. (ICO decision notice [FS50070465](#), March 2008)

Exceptional circumstances

Only in exceptional circumstances will disclosure of an exact salary be appropriate. Where there are additional public interest factors, this may mean that disclosure of the precise salary is necessary and may outweigh any detriment to the individual concerned. This could arise where:

- there are current controversies or credible allegations;
- there is a lack of safeguards against corruption;
- normal procedures have not been followed;
- the individual in question is paid significantly more than the usual salary for their post; or,
- the individual or individuals concerned have significant control over setting their own or others' salaries.

Example:

The Commissioner ruled that Corby Borough Council should disclose the exact total amount paid to an interim Head of Finance, following a critical report from the Audit Commission. The short-term post attracted a higher salary to compensate for a lack of employment rights, but the Chief Executive subsequently renewed the contract at the same rate with the addition of holiday and pension contributions. The Commissioner decided this justified "additional public scrutiny" (ICO decision notice [FS50062124](#), August 2005)

Other exemptions

Section 40(2) FOIA may not be the only relevant exemption. For example, FOIA section 43(2) provides an exemption where the disclosure "would or would be likely to prejudice the commercial interests of any person" including the public authority.

Advice on all the exemptions can be found on [our website](#).

More information

This guidance will be reviewed and considered in line with new decisions of the Information Commissioner, Tribunal and courts on freedom of information cases. It is a guide to our recommended approach in this area.

If you need any more information, please contact us.

Phone: 0303 123 1113

Website: www.ico.gov.uk

Refusing a request: how to issue a refusal notice

Freedom of Information Act 2000

Refusing a request

The Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR) provide rights of public access to information held by public authorities. This is part of a series of guidance notes produced to help public authorities to understand their obligations and to promote good practice.

This detailed guidance, which covers both the FOIA and the EIR, explains to practitioners in public authorities how to issue a refusal notice and what it should contain. It also sets out good practice to follow.

We have also produced related guidance: [Writing a refusal notice](#), which features template refusal notice letters. Both pieces of guidance together replace Good Practice Guidance No.1.

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Introduction

Both the FOIA and the EIR provide a right for any person to request information held by public authorities and set out the requirements for responding to the request. Codes of Practice give further details as to the way in which authorities should handle requests. In circumstances where an authority is unable to disclose the information requested, for whatever reason, or it cannot confirm whether or not the information exists or is held, the response by the authority requires particular care. This guidance assists public authorities to comply with the FOIA and the EIR in such situations, as well as encouraging them to follow good practice.

A response in which the authority does not disclose the requested information to the requester, or does not confirm whether or not the information exists or is held, is referred to as a "refusal notice".

Benefits of issuing a good refusal notice

There are a number of potential benefits for a public authority in following both the correct procedure and good practice when issuing refusal notices:

- it will help to enhance the authority's reputation;
- the authority may receive fewer applications for internal review;
- it should result in fewer complaints being made to the Information Commissioner about the handling of requests;
- when investigating a complaint, the Information Commissioner will consider the quality and timeliness of a refusal notice, including the application of any exemptions;
- if an appeal is made to the Information Tribunal against a decision notice, the tribunal will consider any refusal notice issued by the authority in respect of the request; and
- it will help the authority to conform with the section 45 (FOIA) and regulation 16 (EIR) Codes of Practice (the "Codes").

Summary

In relation to refusal notices:

- A refusal notice should be issued as soon as possible and not later than 20 working days from receipt of the request.

- It must be clear and specific and it should explain the authority's decision and reasons for withholding the information.
- The notice must contain information about the authority's complaints procedure where one exists and the right of appeal to the Information Commissioner's Office.
- A refusal notice is also required when an authority neither confirms nor denies whether information is held or neither confirms nor denies whether an exemption or exception applies. However this type of refusal notice does not have to contain the same amount of detail (see below).
- If the authority does not hold the information requested, under the FOIA a formal refusal notice is not required, but the authority must confirm in writing within 20 working days that it does not hold the information which has been requested. However under the EIR a refusal notice is required, since the EIR contain a specific exception (regulation 12(4)(a)) to disclosure where information is not held.
- Failure by a public authority to conform to the FOIA and EIR Codes may lead the Information Commissioner to issue a Practice Recommendation specifying steps for the authority to take.
- There are some differences between the FOIA and the EIR in relation to refusal notices.

What does the FOIA say?

The relevant provisions of the FOIA are contained in:

- Section 1: this provides a general right of access to information held by public authorities.
- Section 10: an authority must comply with section 1 within 20 working days, subject to certain provisions.
- Section 17: if a request is refused, the authority must issue a refusal notice which explains its decision, including the application of any exemptions, and sets out any complaints procedure the authority has in place, together with the applicant's right of appeal to the Information Commissioner.

Further guidance is provided in the [section 45 Code of Practice](#).

What do the EIR say?

The relevant provisions of the EIR are contained in:

- Regulation 5: "a public authority that holds environmental information shall make it available on request....as soon as possible and no later than 20 working days after the date of receipt of the request".
- Regulation 14: if a request is refused, the authority must issue a refusal notice which explains its decision, including the application of any exceptions, and sets out the authority's complaints procedure (compulsory under the EIR) together with the applicant's right of appeal to the Information Commissioner.

Further guidance is provided in the [regulation 16 Code of Practice](#).

FOIA or EIR?

If the information being considered within a request is environmental information, the request must be handled under the provisions of the EIR rather than the FOIA. For more detail on what constitutes environmental information, please see our guidance: [What is environmental information?](#) Therefore, when issuing a refusal notice, it is important to apply the correct legislation. Failure to do this correctly may be a breach of section 17 of the FOIA or of regulation 14 of the EIR.

Example:

In [Archer v Information Commissioner and Salisbury District Council EA/2006/0037 \(9 May 2007\)](#) the Information Tribunal found that although both the authority and the Information Commissioner had applied the FOIA to the request and to the complaint respectively, it was the EIR which actually applied to the information in question. Hence the authority was in breach of regulation 14(3) of the EIR.

Correct procedure for issuing a refusal notice under the FOIA

When refusing a request, a public authority must issue a refusal notice to the requester within 20 working days following the date of receipt of the request.

Content of response

The refusal notice must state and explain the authority's full reasoning behind its decision and must specify any exemption upon which it relies.

Time limits

- The refusal notice must be clear and timely - issued within 20 working days.

- If an authority does not hold the information, it is not required to issue a formal refusal notice; but it must still inform the requester of the fact in writing within 20 working days.
- An authority may take further time to consider the public interest test in relation to the duty to confirm or deny or a qualified exemption. However it must issue a notice to the requester within 20 working days stating why it requires more time to come to its decision, and it must give an estimate of the date by which it expects to answer the request in full. Please refer to our guidance on [The public interest test](#).
- For further details, please see our guidance: [Time for compliance](#).

Exemptions

- If an exemption has been applied, a refusal notice must specify the section and sub-section, and must set out the full reasoning behind the decision.
- Where more than one exemption is genuinely valid, the authority should specify all relevant sections and sub-sections separately and clearly state the reasoning behind each of its decisions and the specific information to which each applies.
- If the applied exemption is “prejudice based”, the authority must explain the likely harm which would arise from disclosure or from confirming or denying that the information is held, as appropriate. We recommend the authority to specify here whether disclosure “would prejudice” or “would be likely to prejudice”.
- If the applied exemption is a qualified one to which the public interest test applies, the authority must assess whether: “in all circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information” and must state its detailed reasoning in the refusal notice. For further details, please see our guidance: [The public interest test](#).

Example:

In the ICO decision notice [FS50101105](#) the Commissioner found that, in its refusal notice, the public authority was in breach of section 17 in several respects. It had failed to state all exemptions it applied, it had failed to explain adequately the reasons why the exemption was engaged and why the public interest favoured maintaining a particular exemption.

- If a complaint is made to the Information Commissioner, he will consider the application of any exemptions cited in the refusal notice. The authority should aim to get it right first time. Failure to refer to an exemption later relied on

during an investigation may not be accepted by the Information Commissioner and may be a breach of the FOIA.

Example:

In [King v the Information Commissioner and the DWP](#) EA/2007/0085 (20 March 2008) the tribunal decided that it and the Commissioner have the power to consider exemptions raised for the first time. Whether they would actually do so would depend on the facts of the case. In [DBERR v the Information Commissioner and Friends of the Earth](#) EA/2007/0072 (29 April 2008) the tribunal confirmed that it may decide on a case by case basis whether an exemption can be claimed for the first time outside the time limits imposed by sections 10 and 17.

Complaints procedure

In order to conform to the section 45 Code of Practice, an authority should have a complaints procedure in place, or if it does not have one it must state that fact. In both cases, the authority must describe the right to appeal to the Information Commissioner under section 50 of the FOIA, and give the ICO contact details.

Example:

In the ICO decision notice [FS50092955](#) one of the Commissioner's findings was that the authority had not complied with sections 17(1) and (7) as it had failed to state in its refusal notice why an exemption applied. In addition it had failed to state that it had a procedure for dealing with complaints and that the applicant had a right of appeal to the Commissioner.

Neither confirm nor deny

In circumstances where confirming or denying whether information is held or confirming or denying whether an exemption applies would in itself entail the disclosure of exempt information, an authority is still required to issue a refusal notice. However it is not required to explain why an exemption applies or why the public interest favours maintaining the exemption or the exclusion of the duty to confirm or deny. In these circumstances, the authority should keep a record of its analysis for supply to the ICO in the event of a complaint.

Example:

An individual requests information about whether the police are conducting surveillance on particular properties as part of a criminal investigation. Such information would be covered by the section 30 exemption relating to investigations and proceedings. It would not be in the public interest for the police to confirm or deny which properties are under surveillance, since to do so would harm the investigations. To admit they even hold such information on a specific property would indicate that they are conducting surveillance on it. Thus the police may neither confirm nor deny whether they are conducting surveillance on any properties or even whether they hold such information.

Personal data under the Data Protection Act 1998

In respect of a request for information which is actually a Subject Access Request ("SAR"), technically under the FOIA an authority is required to issue a refusal notice. However the ICO takes a practical view that where this will lead to avoidable delay, we would not expect an authority to do so, but rather to deal with the request as a SAR.

Vexatious or repeated requests

If the authority wishes to rely on this exemption it must still issue a refusal notice stating whether or not it holds the information, unless the following two criteria apply:

- it has previously issued a refusal notice to the requester regarding an identical or substantially similar request, stating it is relying on section 14, and
- it would be unreasonable for the authority to have to issue a further notice.

For further details, please see our guidance: [Vexatious or repeated requests](#).

Transferring a request

If an authority cannot comply with a request because it does not hold some or all of the information, the section 45 Code suggests that it should state this in its refusal notice. If the authority believes that another authority holds some or all of the information requested, the section 45 Code suggests that it should consider how best to assist the applicant with his or her request and should do the following:

- consider whether to inform the applicant that the information is held by a different authority;
- either: suggest the applicant make a request to the authority, providing contact details;
- or: with the applicant's consent, transfer the request direct to that different authority, consulting it beforehand to verify that it holds the information and that it is obliged to confirm to the applicant that it does so under the FOIA;
- transfer the request as soon as practicable, informing the applicant that it has been done; and
- when a request is transferred to a different authority, the time limit for it to respond applies from the date of transfer.

Good practice

Section 12

Where a public authority intends to refuse a request under section 12, it should provide advice and assistance no later than the time of the refusal notice. The section 45 Code suggests that the advice and assistance should include an indication to the requester as to what information could be provided free of charge or for a lower fee and/or advise them how to amend the request so as to obtain information within the costs ceiling.

Section 45 Code of Practice

If the Commissioner considers that an authority's practice does not conform to the Code, he may issue a practice recommendation specifying the steps that should be taken.

Correct procedure for issuing a refusal notice under the EIR

Many of the principles governing the refusal of requests for information made under the EIR reflect those of the FOIA.

Although an EIR request may also be made verbally, rather than just in writing, a public authority must refuse the request in writing.

Content of response

The refusal notice must explain the authority's full reasoning behind its decision and must specify any exception upon which it relies.

Time limits

- When refusing a request, a public authority must do so as soon as possible and no later than 20 working days after the date of receipt of the request.
- If the authority does not hold the information, it is required to issue a refusal notice. The public authority is therefore obliged to inform the requester of this fact within 20 working days, as with any other exception.
- If the request is complex and voluminous, the authority may extend the time limit to 40 working days, but it must notify the applicant of this within 20 working days after the date of receipt of the request.

Exceptions

Complaints procedure

- An authority is required to have a complaints procedure in place.
- A refusal notice must inform the requester of the right to “make representations” to the authority if he or she considers it has failed to comply with the EIR.
- A refusal notice must also state the requester’s right to appeal to the Information Commissioner and must give contact details (the enforcement and appeal provisions of the FOIA apply to the EIR).

Neither confirm nor deny

For the purposes of information concerning “international relations, defence, national security or public safety”, a public authority may state in its refusal notice that it neither confirms nor denies whether it holds such information or even whether it exists. It is entitled to do this provided disclosure would “adversely affect” any of those interests and provided that it would not be in the public interest to disclose it. The circumstances in which an authority can neither confirm nor deny are therefore more limited in the EIR than under the FOIA.

Personal data under the Data Protection Act 1998

A public authority may also adopt a “neither confirm nor deny” response in its refusal notice under specific circumstances relating to data protection, including where that confirmation or denial would contravene any of the data protection principles.

Manifestly unreasonable requests

If an authority wishes to rely on the exception in regulation 12(4)(b) (“the request for information is manifestly unreasonable”) it must issue a refusal notice stating whether or not it holds the information and giving reasons for its refusal. Although there is no separate cost limit for responses to requests under the EIR, the cost of complying with a request can be taken into account when considering whether a request is manifestly unreasonable. The public authority must, in all cases, apply the public interest test. The authority should note that the FOIA and the EIR differ in various respects on this aspect; however we consider that a request that would be considered vexatious under the FOIA is likely to be manifestly unreasonable under the EIR (but “manifestly unreasonable” has a wider meaning than “vexatious”). For further details, please see our guidance: [Vexatious or repeated requests](#) as well as: [EIR: an introduction to the exceptions](#).

Transferring a request

Under the EIR, an authority which does not hold the information requested (or part of it) but believes that a different authority (including a Scottish one) holds the information, it is obliged to do the following:

- either: transfer the request to the different public authority;
- or: give contact details of that authority to the applicant;
- in both instances it must inform the applicant fully of its action in its formal refusal notice;
- when a request is transferred to a different authority, the time limit for it to respond applies from the date of transfer;
- the regulation 16 Code gives further detailed guidance on transferring requests, including the following:
 - o the authority should consider how best to assist the applicant with his or her request;
 - o this would include assessing whether a transfer is appropriate or whether it should provide contact details to the applicant;
 - o it should consult the different authority and obtain the applicant’s consent prior to any transfer; and
 - o any transfer should take place as soon as practicable.

Good practice

EIR regulation 16 Code of Practice

When issuing a refusal notice under regulation 12(4)(c) (“the request for information is formulated in too general a manner”) the authority must provide

advice and assistance to applicants. By conforming to the regulation 16 Code, a public authority will be taken to have complied with its duty to provide advice and assistance.

The Code suggests ways in which an authority might provide advice and assistance to an applicant:

- If a request is insufficiently clear, the authority should ask for more details to enable it to respond.
- In seeking clarification, the authority should aim to assist the requester, for example by guiding him as to the sort of information which might satisfy his request, or setting out options.

Example:

In the case of [Boddy v Information Commissioner and North Norfolk District Council EA/2007/0074 \(23 June 2008\)](#) the tribunal decided that in a situation where, on making a request, the requester draws the authority's attention to his current dealings with the authority, then if this would affect the interpretation of the request the authority has a duty to provide advice and assistance.

If the Commissioner considers that an authority's practice does not conform to the Code, he may issue a practice recommendation specifying the steps that should be taken.

Conclusion

To summarise: in relation to refusal notices, an authority should comply with the relevant obligations of the FOIA and of the EIR as well as with, respectively, the section 45 and regulation 16 Codes of Practice.

Additional information on aspects of the FOIA and the EIR

This is available on specific aspects referred to in this guidance. Please refer to the ICO website as follows:

[Guidance on the FOIA](#)

[Guidance on the EIR](#)

Comparison table: refusal notices under the FOIA and the EIR

	FOIA	EIR
Must the refusal notice be in writing?	Yes.	Yes. The EIR do not require a request for information to be made in writing, but a refusal under regulations 12(1) or 13(1) must be in writing.
Deadline for issuing refusal notice	As soon as possible and at latest by 20 working days from date of receipt of request.	As soon as possible and at latest by 20 working days from date of receipt of request.
Can the deadline be extended?	No. You may however set a new deadline when you are applying the public interest test. You must issue a notice within the initial 20 day deadline to say that you are doing so. In that notice you must estimate how long this will take; this must take no longer than a further 20 working days.	Yes, but only where the request is complex or voluminous, in which case it can be extended to 40 working days.
Is a refusal notice required if information is not held?	No. However you must confirm that you do not hold the information within 20 working days.	Yes – cite exception under regulation 12(4)(a).
Detail behind decision required in a refusal notice	Full reasoning for decision; specify the exemption(s) relied on. You must explain the section and sub-sections applied and your consideration of the public interest test, giving the detail and balance.	Full reasoning for decision; specify the exception(s) relied on. All exceptions are subject to the public interest test and should include the detail and balance.
Include in refusal	Yes. To comply with the	Yes. It is compulsory to

Refusing a request

notice the details of complaints procedure and right of appeal to ICO?	section 45 Code, you should state whether you have a procedure or not.	have a complaints procedure under the EIR.
Does the refusal notice need to refer to any transfer of request to a different authority?	No, but the Section 45 Code provides guidance on the procedure for this. It recommends that the authority should be as helpful as possible to the requester, including keeping them informed.	Yes. Regulation 10 specifies the procedure for transferring requests elsewhere, requiring the authority to keep the requester informed. The regulation 16 Code provides further guidance.
Is a refusal notice required in cases of “neither confirm nor deny”?	Yes.	Yes. NB the EIR give a more limited right for authorities to neither confirm nor deny than under the FOIA.

More information

This guidance will be reviewed and considered from time to time in line with new decisions of the Information Commissioner, tribunal and courts on freedom of information cases. It is a guide to our general recommended approach to this area, although individual cases will always be decided on the basis of their particular circumstances.

If you need any more information about this or any other aspect of freedom of information, please contact us.

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Freedom of Information Act 2000

The exemption for criminal investigations, criminal proceedings and confidential sources

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Introduction

The Freedom of Information Act 2000 (FOIA) gives a right of public access to information held by public authorities. This is part of a series of guidance notes to help public authorities understand their obligations under the FOIA and to promote good practice.

This guidance will explain the application of the exemption in section 30 of the FOIA. It will help public authorities when considering this exemption in relation to information obtained during a criminal investigation for the purposes of criminal proceedings, or about confidential sources used during certain investigations.

This guidance replaces Awareness Guidance 16.

Overview

Section 30 creates an exemption for information:

- which is or has been held for the purposes of a criminal investigation;
- which is or has been held for criminal proceedings conducted by a public authority; or,
- which was obtained or recorded for various investigative functions and relates to the obtaining of information from confidential sources.

Criminal investigations and proceedings include matters dealt with in the Armed Forces either summarily or before a court-martial.

Section 30 provides a class based exemption. This means it is not necessary to identify some prejudice that may arise as a result of disclosure in order to engage the exemption.

As the exemption is subject to the public interest test, a public authority must consider whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Although you do not have to identify some prejudice in order to engage the exemption, it will be an important factor when applying the public interest test.

Relationship with the exemption in section 31 (law enforcement)

There are areas of overlap between sections 30 and 31:

- Section 30 provides an exemption in relation to particular criminal investigations and criminal proceedings brought by public authorities and in relation to the obtaining of information from confidential sources.
- Section 31 provides an exemption where prejudice might be caused to criminal and other investigations and to more general steps taken in relation to crime prevention, law enforcement and investigatory functions.

Section 31 makes clear that, in cases where section 30 applies, section 31 cannot be used.

This does not mean that a public authority cannot consider both exemptions in relation to the same information. It does mean that, in any refusal notice when both exemptions have been considered, a public authority should make it clear that section 31 applies only to the extent that the information is not exempt under section 30.

Find out more about section 31 in our [guidance on the exemption for law enforcement](#).

General application of the exemption

The information described in section 30 is exempt only where the public authority has a duty, or the power, to carry out investigations or has a power to conduct the proceedings described below. Public authorities relying on the exemption need to be aware of the legal basis of any investigations or prosecutions which they carry out.

In the area of law enforcement and investigation, some powers and duties are conferred upon officers and officials rather than the organisations to which they belong. For example, the duty to investigate potential criminal activity is conferred on the individual constable rather than the police force. Similarly, it is individual officers of Her Majesty's Revenue and Customs who are granted powers of investigation. For the purposes of this exemption, a public authority is deemed to have the authority to investigate or prosecute that is held by the individual officers of the authority. Similarly, where the duty is invested in a Minister, it is deemed to be the duty of the relevant government department.

Criminal investigations and prosecutions (Section 30(1))

The first part of the exemption covers information which “has at any time been held” by a public authority for any of the following purposes:

- a) Investigations into whether a person should be charged with an offence, or whether a person charged with an offence is guilty of it.

For this element of the exemption to apply the public authority must have a **duty** to carry out the investigations. This will cover the police and related bodies, but will also extend to other authorities such as H M Revenue and Customs, the Department for Business, Enterprise and Regulatory Reform, and the Health and Safety Executive.

- b) Investigations which may lead the authority to initiate criminal proceedings which it has the power to conduct.

In such cases there is no requirement for the authority to have a duty to conduct the investigation, but it must have the **power** to do so as well as the **power** to conduct the criminal proceedings. It is also not necessary for the focus of the initial investigation to be on potential criminal proceedings. For example, during the course of an investigation being conducted by a public authority in accordance with its regulatory functions, the authority may decide to institute criminal proceedings, but, as with a), the information is held for the purposes of the investigation.

- c) Criminal proceedings which the public authority has the **power** to conduct.

There is no investigatory element here; the information is held for the purposes of the criminal proceedings. As with b) above, this will apply to authorities who themselves are prosecuting authorities.

Key terms

- The phrase “at any time” (see above) means that information is exempt under section 30(1) if it relates to an ongoing, closed or abandoned investigation. It extends to information that has been obtained prior to an investigation commencing, if it is subsequently used for this purpose.
- The term “charged with an offence” (see (a) above) is not defined in the Act. Technically, suspects are charged after arrest, when they appear in person before a court, or in accordance with procedures in section 29 of the Criminal Justice Act 2003. However, summary prosecutions can be commenced without charge and so we take the view that the phrase should be extended to include investigations which lead to the commencement of criminal proceedings where the defendant is not technically “charged” with an offence.

Cautions given by the police are also included in this definition as they represent an alternative to being charged with less serious offences.

- The term “criminal proceedings” (see (b) and (c) above) refers to the process through which criminal laws are enforced. Proceedings will usually begin either on summons or when the accused is charged with an offence. Included within the definition of criminal proceedings are military procedures for the investigation and prosecution of offences summarily and before courts-martial, and similar courts, in accordance with statutes authorising them.

The application of section 30 is also extended to include the procedures in Scotland for investigating and prosecuting criminal matters.

Section 63 of the FOIA makes clear that section 30(1) does not apply to information which is thirty years old or more, when it is classed as a historical record.

Information obtained by investigating bodies which relates to the obtaining of information from confidential sources (section 30(2))

The second part of the exemption, in section 30(2), is concerned with information held in relation to a wider range of more general investigatory functions and which relates to the obtaining of information from confidential sources. The functions in question must relate to one of the following:

- The investigations and criminal proceedings referred to earlier.
- Other investigations which section 30(2) imports from section 31, namely those investigations conducted for the purposes specified in section 31(2), as follows:
 - ▶ ascertaining whether a person has failed to comply with the law;
 - ▶ ascertaining whether a person is responsible for any improper conduct;
 - ▶ ascertaining whether there are or may be circumstances which would justify regulatory action under any legislation;
 - ▶ ascertaining a person's fitness or competence to manage a corporate body or to continue in any profession or other activity which they are, or would like to become, authorised to carry on;
 - ▶ ascertaining the cause of an accident;

- ▶ protecting charities against misconduct or mismanagement in their administration;
 - ▶ protecting the property of charities from loss or misapplication;
 - ▶ recovering the property of charities;
 - ▶ securing the health, safety and welfare of people at work; and,
 - ▶ protecting people (other than staff) against risks to their health or safety arising from the actions of people at work.
- Civil proceedings brought by or on behalf of a public authority arising from any investigation referred to above. This specifically refers to matters that the authority has the power to investigate or prosecute and would cover, for example, investigations and proceedings for antisocial behaviour orders, enforcement of child protection legislation, orders to forfeit the proceeds of crime and civil action to recover money owed to a charity.

If information held by a public authority is for the purposes of any of these functions **and** it relates to the obtaining of information from confidential sources, it is covered by this exemption.

- It is important to note that the exemption applies to the general process by which information is obtained from confidential sources and does not directly apply to the information supplied by the source.
- Information exempt under this part of the section might include, for example, the methods by which criminal intelligence is gathered from confidential sources which may help the development of either current investigations or those that have not yet been launched. There may be occasions when the information identifies either directly or indirectly the source of the information.
- Confidential sources will include witnesses who do not wish to be identified and police informers.

This provision is principally intended to give protection to the identities of confidential sources so that those sources are not discouraged from approaching investigative bodies to inform on criminal or improper acts.

'Confidential' in this section has a wider, more general, meaning than in other parts of the FOIA and is not limited to circumstances where a breach of the confidence could result in civil action. It is intended to cover the 'confidential' relationship between the source and the public authority whereby protection is given to the identity of the source.

Unlike the first part of the exemption, this part can be used for information contained in historical records.

The public interest test

Section 30 is a qualified exemption. If the information requested is covered by the exemption, the public authority must then apply the public interest test set out in section 2(2)(b). The information can only be withheld if the public interest in maintaining the exemption outweighs the public interest in disclosure.

This involves weighing the prejudice that may be caused to an investigation or prosecution, or more generally to the investigatory and prosecution processes of the public authority, against the public interest in disclosure. There is general recognition that it is in the public interest to safeguard the investigatory process. The right of access should not undermine the investigation and prosecution of criminal matters nor dissuade individuals from coming forward to report wrongdoing.

It is also not in the public interest to undermine the prosecution process and the role of the criminal courts as the bodies responsible for determining guilt. Where it is quite clear that disclosure could prejudice the right to a fair trial, it would not be in the public interest to release it.

This principle was recognised by the Information Tribunal, in the case of [Mr A Digby-Cameron v the Information Commissioner \(EA/2008/0023 &0025; 26 January 2009\)](#), when it stated that the general public interest served by section 30 was “the effective investigation and prosecution of crime, which itself requires in particular (a) the protection of witnesses and informers to ensure that people are not deterred from making statements or reports by the fear that they may be publicised, (b) the maintenance of the independence of the judicial and prosecution processes and (c) the preservation of the criminal court as the sole forum for determining guilt.”

The following examples also demonstrate the recognition by the Information Tribunal of the public interest inherent within the exemption:

Example

In [Department of Trade and Industry v Information Commissioner \(EA/2006/0007; 10 November 2006\)](#), a case about information relating to an investigation conducted under the Companies Act 1985, the Information Tribunal stated that the FOIA acknowledges “that there is a public interest in recognising the importance of the proper conduct of investigative processes and procedures carried out by public authorities, particularly those which might lead to criminal proceedings, and moreover that in relation to such procedures and possible proceedings, the maintaining of confidential sources must be respected.”

Example

In [Guardian Newspapers Ltd v Information Commissioner and the Chief Constable of Avon and Somerset Police \(EA/2006/0017; 5 March 2007\)](#), the Tribunal, having identified minimal public interest either in maintaining the exemption or in disclosure of the requested information, determined that the overriding factor was “the interest in principle, recognised by the exemption applying to s30(1), in protecting information acquired, often in confidence, in police investigations”. It concluded that the public interest in maintaining the exemption outweighed that in the disclosure of the information.

Other public interest considerations to take into account include:

- **Timing of disclosure**

The public interest in maintaining the exemption will be very strong while an investigation is being carried out or, having been suspended, may be re-opened. However, once an investigation is completed, the public interest in understanding why an investigation reached a particular conclusion, or in seeing that the investigation had been properly carried out, may outweigh the public interest in maintaining the exemption.

We have seen above (in the Guardian/Avon and Somerset Police case) that the interest in principle can be the overriding factor in cases where there is little public interest either in maintaining the exemption or in disclosure. By definition, this is likely to mean that the public interest in maintaining the exemption will be considerable in cases where information is requested relating to an open police investigation.

Example

In [Digby-Cameron v Information Commissioner \(EA/2008/0023 & 0025; 26 January 2008\)](#) the applicant had requested documents which had been given voluntarily in connection with an on-going police investigation and the Tribunal stated that the usual expectation concerning such evidence is that it “would only be used for the purposes of ... a criminal case in court and not disclosed to third parties in advance.” It went on to state that “the independence of the prosecution process and the preservation of the position of the criminal court may have been undermined if the information was disclosed without consent in advance of a criminal case or decision not to prosecute.”

Public authorities must not assume that they should not release any information about ongoing investigations, although the public interest in maintaining the exemption will often be considerable where an investigation is open. Much will depend on the effect of disclosure. There will be a strong case for maintaining the exemption where keeping the information secret is important to the success of the investigation.

In cases where a prosecution has collapsed for reasons of procedural failure or mismanagement on the part of the investigating or prosecuting authority, the public interest in favour of the disclosure of information about the investigations may be stronger.

- **Information in the public domain**

There tends to be considerable public interest in criminal cases and in seeing that justice is done. What is already in the public domain is a relevant factor when considering disclosure. This may shift the balance of public interest in favour of the disclosure of information about completed cases or those which have been abandoned with no reasonable prospect of being reopened. Authorities should still exercise caution, as there will be cases where information has previously entered the public domain, for example by disclosure in court, but does not necessarily remain in the public domain.

Example

This was discussed in the case of [Armstrong v Information Commissioner and HMRC \(EA2008/0026; 14 October 2008\)](#) concerning a request made for information relating to the trial of Abu Bakr Siddiqui at Southwark Crown Court. The Information Tribunal said: “Even if the information had previously entered the public domain, that is not in itself conclusive of whether the public interest weighs in favour of disclosure, it is merely one consideration to be weighed in the public interest balance.”

- **Significance of the information**

This was one of the issues in the Guardian/Avon and Somerset Police case, and has been considered by the Information Tribunal in other cases.

Example

The case of [Keeley v Information Commissioner \(EA/2007/0113; 19 May 2008\)](#) concerned a request to the Department of Business, Enterprise and Regulatory Reform for information relating to the applicant’s original request for the Department to investigate his complaint against a publicly listed company. The Department’s

response to his request for an investigation was subject to external scrutiny by the Parliamentary Ombudsman. The Tribunal concluded that, although “the publication of information would serve to inform public debate into the quality and effectiveness of its work”, on balance the significance of the information was slight and was “reduced by the fact that the standard of the Department’s work has already been considered by the Ombudsman.” As a result, the public interest in withholding details of the Department’s investigative methodologies outweighed that in disclosing information about those processes.

Public interest and confidential sources

There is a clear public interest in the ability of public authorities to be able to obtain information from confidential sources in relation to the investigations and proceedings covered by this exemption. As mentioned above, this was confirmed by the Information Tribunal in the Department of Trade and Industry and Guardian/Avon and Somerset Police cases. The disclosure of such information could have very serious consequences both for the individual source and the future willingness of people to provide information.

Example

In the case of [Alcock v Information Commissioner and Chief Constable of Staffordshire Police \(EA/2006/0022; 3 January 2007\)](#) the Information Tribunal stated that whilst the disclosure of information could assist the public “in understanding the decisions taken by the Staffordshire Police and in holding the Staffordshire Police accountable for their actions and for their use of public funds”, this was outweighed by the risk that the disclosure of information “provided to them on a confidential basis would be likely to deter others from providing information to them” and which “would be likely seriously to hinder police efforts in the prevention and detection of crime.”

Example

In the case of [The Metropolitan Police v Information Commissioner \(EA/2008/0078; 30 March 2009\)](#) the Information Tribunal decided that police ledgers dating from 1888-1912 should be disclosed to the requester, but that the names of informants should be removed. In doing so, the Tribunal recognised “the overwhelming importance of the longstanding policy adopted by the MPS that informants can be assured that their names and identities will not be disclosed even after they die.” Disclosure of such information could discourage potential informants from coming forward in the future.

Applying the public interest test in relation to this exemption is likely to involve a number of considerations including human rights issues and an assessment of the impact of disclosure on the success of an investigation or potential prosecution. We strongly advise public authorities to put procedures in place for identifying the difficult cases and for taking appropriate legal advice.

For more advice see [The Public Interest Test - Awareness Guidance 3](#) .

The duty to confirm or deny

Public authorities should also remember the duty to confirm or deny whether they hold the information. Even if the information itself is exempt from disclosure, authorities may still need to confirm that they hold it unless the confirmation itself would be exempt under section 30(3). In the same way, if they do not hold the information, they must say this unless the denial itself would be exempt. Any refusal to confirm or deny is also subject to the public interest test.

The success of many investigations depends on making sure that information about them is not disclosed prematurely. Similarly, bodies responsible for carrying out investigations will want to protect confidential sources. In many instances damage can be caused by the confirmation that information is held. It is therefore likely that public authorities will want to respond to a number of requests for information by neither confirming nor denying that information is held.

It is not acceptable to provide no response. The FOIA requires public authorities to explain which exemption applies to information and indicates that fuller explanation is not required if this in itself would involve the disclosure of exempt material. As a matter of good practice, we strongly recommend that those authorities who are likely to want to neither confirm nor deny that they hold the information requested, prepare a statement of policies about disclosure. This can then be provided to applicants without the risk of implying comment on particular requests.

For more advice see [The duty to confirm or deny \(Awareness Guidance 21\)](#).

Other considerations

In many circumstances the exemption in section 40 will also apply to information about living individuals mentioned in investigation files. We have produced detailed guidance on how to use [the exemption for personal information](#).

If the information requested is environmental information, the most relevant exception is that in regulation 12(5)(b) which applies when disclosure would adversely affect the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature. For more advice see our guidance [An Introduction to the EIR Exceptions](#).

More information

This guidance will be reviewed and considered from time to time in line with new decisions of the Information Commissioner, Tribunal and courts on freedom of information cases. It is a guide to our general recommended approach to this area, although individual cases will always be decided on the basis of their particular circumstances.

If you need any more information about this or any other aspect of freedom of information, please contact us.

Phone: 08456 30 60 60
01625 54 57 45

Email: please use the online [enquiry form](#) on our website

Website: www.ico.gov.uk

Leicester City Council

Information Governance



Briefing Note

Senior Officer Remuneration

One Passion. One Leicester.

Regulation 4 of the Accounts and Audit (Amendment No.2) (England) Regulations 2009 [SI 2009 No. 3322] introduce a new legal requirement to increase transparency and accountability in Local Government for reporting remuneration of senior employees and senior police officers.

For senior* employees whose **salary** is £50,000 or more per year but less than £150,000, they are required to be listed individually by way of job title.

Persons whose **salary** is £150,000 or more per year must also be identified by name.

Disclosure will be made for each financial year under the following categories:

- salary, fees and allowances;
- bonuses;
- expenses allowance;
- compensation for loss of employment;
- employers pension contribution;
- any other emoluments

The above information can be released under a Freedom of Information Act request.

For more information see:

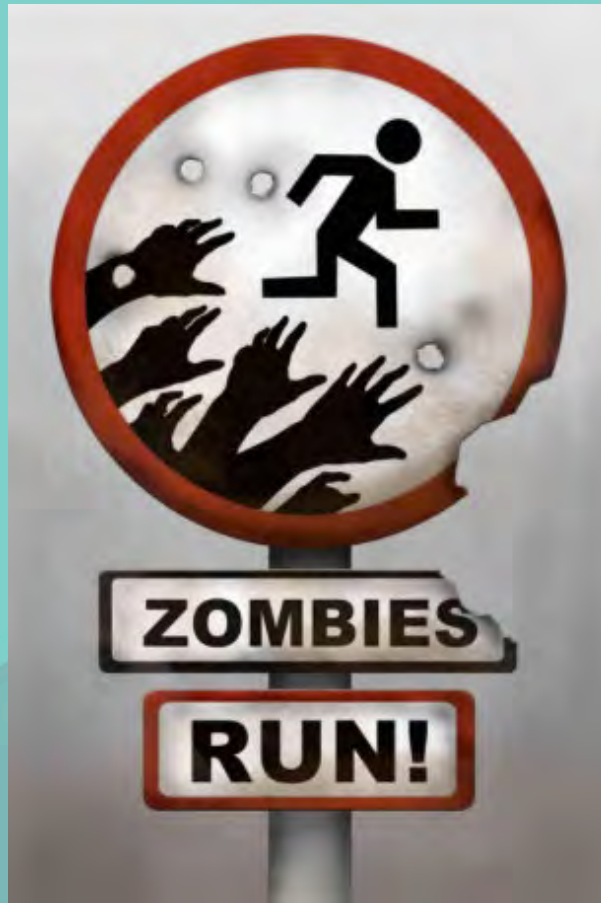
<http://www.cipfa.org.uk/pt/download/laap85.pdf>

* Senior employees are typically an authority's Chief Executive (or equivalent), their direct reports (other than administration staff), and statutory chief officers.

Embedding Effective Information Rights in your Organisation - Overcoming the Common Challenges

Lynn Wyeth

Head of Information Governance & Risk
Leicester City Council





Council quizzed over zombie invasion plans by resident

Leicester City Council was asked to explain its emergency plans to tackle a zombie invasion, in a bizarre Freedom of Information request.




Dawn of the Dead film - 1978


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How about that?

News » UK News »
Emily Gosden »

10 June 2011 Last updated at 08:51

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Leicester City Council 'not ready' for zombie attack

A worried member of the public has forced Leicester City Council to admit it is unprepared for a zombie invasion.

The authority received a Freedom of Information request which said provisions to deal with an attack, often seen in horror films, were poor.

The "concerned citizen" said the possibility of such an event was one that councils should be aware of.

"We've had a few wacky ones before but this one did make us laugh," said Lynn Wyeth, head of information governance.

The Freedom of Information Act allows a right of access to recorded information held by public authorities.



The FOI request said "councils across the kingdom" should be prepared for a potential zombie attack

'Zombies' invade Leicester



Leicester Mercury [▶ Follow](#)

Monday, June 20, 2011

Hundreds of walking dead invaded the streets of Leicester on Saturday to test the city's readiness to defend itself from a full scale zombie attack.

Bemused shoppers looked on as the shambling horde lurched and moaned its way from the Clock Tower to Leicester City Council's headquarters.



Training & Empowerment

- You can't answer a FOI request if you don't spot it is one!
- Ensuring frontline staff are trained and empowered to deal appropriately with information rights and FOI requests
- Induction
- Online training modules

Training & Empowerment (2)

- Refreshers
- Regular 'drip drip' reminders
- Carrot and stick
- SIRO / Senior Management
- Tools & Guidance on Intranet

Busting Bottlenecks

- Logging system – centralised
- Monitoring – weekly reporting, annual performance report
- Management information – name and shame (hound!) / celebrate good results

Busting Bottlenecks

- Template responses
- Remind them it's a frontline statutory service – not a back office admin function at every opportunity
- Communication – alerting senior mgt / press office – build trust
- 98-99% answered in time for last 3 years

The Requester

- Customer Service!
- Advice and Assistance (s16)
- Pick up the phone!
- Use plain English
- Reduces appeals



Vexatious Requests

- S14 (1) - vexatious
- S14 (2) – repeated
- Request not requester
- Not Applicant blind
- ICO stance
- Tribunal stance
- Don't be afraid to use it



Requests from the Press

- Investigative journalism
- MPs expenses, Iraq War, Prince Charles letters
- Tabloid journalism – blanket fishing trips
- → Negative headlines & local press requests
- Both can result in no increased trust and bad press for politicians

Councils quizzed on dragon attacks, asteroid crashes and possessed pets in wacky Fol requests

LGA press release 16 August 2014

A fair society can't afford to keep too many secrets

By [Leicester Mercury](#) | Posted: December 31, 2011



🗨️ **Comments (0) Many politicians are dubious about the freedom of information act – which is**

all the more reason to hold on to it, says our Political correspondent, David Maclean

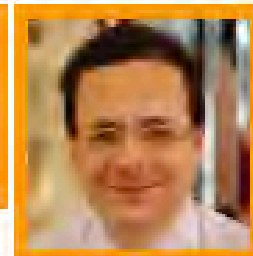
There's a single city council staff member who has given me countless stories over the past two years. She's provided me with everything from the secret dossier which was compiled on the previous Lord Mayor Colin Hall to the memo Sir Peter Soulsby received before refusing the Lancers parade back in May.

She's given me the rundown of the noisiest places to live in the city, told me the cost to the council of young asylum seekers, published staff taxi bills and told me how much has been paid out in compensation for trips and falls.

But unlike the rest of my contacts at New Walk Centre, it's her job to give me this kind of information.

Lynn Wyeth is head of information governance at Leicester City Council, and she deals with Freedom of Information (FOI) requests.

My favourite public sector worker of the week: Lynn Wyeth



By [Mark Pack](#) | Sun 12th June 2011 - 1:55 pm

[Follow @markpack](#) [Follow](#) 414

There's something bureaucratic and management-speak about a job title such as "Head of Information Governance" which can make you fear that the worst sort of mix of cliches, banalities and PR warm words is about to be uttered.

But ... full credit to Lynn Wyeth, holder of this post at Leicester City Council, for her comments to the media following the news that her council had received a freedom of information request about the **council's contingency plans for a zombie attack**:

“We've had a few wacky ones before but this one did make us laugh ... To you it might seem frivolous and a waste of time... but to different people it actually means something,” said Ms Wyeth.

“Everybody has their own interests and their own reasons for asking these questions.”

Careful Lynn. At this rate people might start thinking you're a normal human being.

Transparency

- Transparency Agenda
- Open Data Site
- Protections of Freedom Act
- FOI Disclosure Log
- RoPSI – OGL

Guidance, Decisions & Case Law

- Tools, guidance and resources; plus latest FOI decisions from the ICO
www.ico.gov.uk
- Information Tribunal FOI decisions
www.informationtribunal.gov.uk

Where else to get help

- Mailing lists e.g. Jiscmail
<http://www.jiscmail.ac.uk/>
- Khub <http://www.khub.com>
- Training providers e.g. www.actnow.org.uk/
- or <http://www.amberhawk.com>
- CFOI www.cfoi.org.uk
- WikiFOI / LTT <http://foiwiki.com>
- FOI Directory <http://www.foi.directory>
- Twitter www.twitter.com



Any Questions?

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What is environmental information?

Environmental Information Regulations

What is Environmental Information?

The Environmental Information Regulations 2004 (EIR) give rights of public access to environmental information held by public authorities. This is part of a series of guidance notes to help public authorities understand their obligations and to promote good practice.

This guidance will help identify what is environmental information for the purposes of the EIR.

Overview

- Environmental information is any information on – that is, about, concerning, or relating to – the various definitions contained in Regulation 2(1) of the EIR. You need to consider these definitions and the examples provided in them to understand the wide application of the EIR.
- Environmental information has the same meaning as in European Directive 2003/4/CE (the Directive).
- A principal purpose of the Directive is to provide access to information about our environment.
- The examples provided in Regulations 2(1)(a), (b) and (c) of the EIR are illustrative, not exhaustive.
- It is important for public authorities to identify environmental information correctly in order to deal with information requests.

Background

The EIR have directly incorporated the definition of environmental information from European Directive 2003/4/EC on public access to environmental information. This directive closely follows, but expands upon, the definition in the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters 1998.

What is Environmental Information?

To deal with requests, it is important to understand the distinction between:

- environmental information, which would fall within the scope of the EIR;
- personal data of the requester, which falls under the Data Protection Act 1998; and
- all other information, which falls under the FOIA.

What do the Regulations say?

Regulation 2 of the EIR provides the interpretation of terms in the EIR and in regulation 2(1) states:

“environmental information” has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form on –

(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;

(d) reports on the implementation of environmental legislation;

(e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and

(f) the state of human health and safety, including the contamination of the food chain, where relevant, 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 referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);

What does this mean?

“Environmental information” has the same meaning as in Article 2(1) of the Directive

The definition of environmental information has the same meaning as in the Directive, so it is more important to take into account the purpose of regulations than the rules of interpretation built into English law. Because the EIR stem from a directive to be implemented throughout Europe, their interpretation is helped by considering that their main aim is to contribute to a greater awareness of environmental matters by providing greater access to information about our environment.

Recital 10 in the introduction to the Directive includes: “The definition of environmental information should be clarified so as to encompass information in any form on the state of the environment, on factors, measures or activities affecting or likely to affect the environment or designed to protect it, on cost-benefit and economic analyses used within the framework of such measures or activities and also information on the state of human health and safety, including the contamination of the food chain, conditions of human life, cultural sites and built structures in as much as they are, or may be, affected by any of those matters.”

Article 2(1) aims to provide that clarification. With that in mind, there is little to be gained from considering the subtle differences between, for example, “air and atmosphere” or “discharges and releases”. The examples are there to help identify what is environmental information, not to confuse.

Also, as they are only examples, there will also be other elements of the environment not mentioned in regulation 2(1)(a) and other factors not mentioned in regulation 2(1)(b). The examples are not intended in any way to limit the general definitions of environmental information.

Any information in written, visual, aural, electronic or any other material form

Information covered by EIR can be found in:

- anything written down;
- illustrations;
- sound recordings;
- any type of computer file; and
- any other material form – that is, any other form where information is held on record.

But it does not include information that does not yet exist. Public authorities are not obliged to create information, only to release information held. They may be required to manipulate databases to extract information, but not to manipulate data to create new information.

Example:

If an authority holds figures about river levels and climatic conditions, it may be asked to provide information it can extract from the figures, but it is not required to manipulate that information to produce flooding predictions.

Any information on

The use of the word “on” indicates a wide application and will extend to any information about, concerning, or relating to the various definitions of environmental information. If information is about, relates to or concerns any of the following definitions, it is environmental information.

(a) the state of the elements of the environment and the interaction among these elements

There are two parts to this definition:

- the state of the elements of the environment; and
- the interaction among the elements of the environment.

The state of the elements, or components, of the environment covers quality and quantity. It will include physical, biological, and chemical characteristics. In more general terms, it is the condition of the items that make up our environment. It is not limited to current conditions but includes past and predicted future conditions.

The interaction between the elements – which will also be a factor affecting them for the purposes of regulation 2(1)(b) – recognizes that many aspects of the environment are interlinked.

Elements of the environment such as

This paragraph gives examples to help understanding of what is intended to be covered by “the elements of the environment”. The use of the term “such as” shows that these are examples and not an exhaustive list. There will be other components of the environment not included in these illustrations and information on their condition will be environmental information.

- **Air and atmosphere** – In many circumstances there will be no difference between air and atmosphere, but the reference to both elements suggests that air also refers to air in buildings and structures and other places where it is confined in some way. The gases and indeed solid particles that make up the atmosphere and air will also be included.

What is Environmental Information?

- **Water** – This will include water in all its forms – vapour, ice, liquid - and is not limited by scale as long as it can still be said to be an element of the environment. It includes water underground or on the surface and water in natural settings and in man-made systems.
- **Soil and land** – Soil can be taken to be the loose mineral and organic top layer of the earth's surface in which plants could grow. Land is the solid, as contrasted to the liquid or gaseous, parts making up the earth's surface. It may well include land under the surface. There is a legal definition of land for the purposes of English law, but the regulations are referring to land as an element of the environment, not land as defined in English law.
- **Landscape** – Landscape is an area, as perceived by people, whose character is the result of the action and interaction of natural or human factors or both. Specialist guidance may give more technical definitions, but there is no real need to go beyond a common understanding of what the landscape is, whether urban or natural, rural or marine and whether attractive, everyday or degraded.
- **Natural sites, including wetlands, coastal and marine areas** – A site will not need to have been formally designated as requiring protection, for example as a Site of Special Scientific Interest, to qualify as a natural site. All sites that are recognized as examples of the landscape in its natural condition, or as sites supporting natural flora or fauna would qualify, including wetlands, coastal and marine areas.
- **Biological diversity and its components, including genetically modified organisms** – Biological diversity is the variety and variability among living organisms and the ecological complexes in which they occur. A genetically modified organism is one in which the genetic material has been altered in a way that does not occur naturally. As this example of an element of the environment extends to the components of biological diversity it would suggest that information on individual species can be environmental information, if it is about where they fit into ecosystems. However, not all biological information is environmental information. As an illustration: information on the life cycle of the badger would not fall within the definition; information on the number of badgers in a particular location may do, as information on the state of a component of biological diversity as an element of the environment.

Example:

Regulations to determine fishing quotas are likely to be environmental information – in the definition in regulation 2(1)(c) - as measures likely to affect or designed to protect a component of biological diversity.

(b) factors, affecting or likely to affect the elements of the environment referred to in (a)

A factor in this sense should simply be taken to mean something physical that has an impact or influence. An element may be a factor. For instance, water will be a factor in an incidence of flooding. A factor may also be the state of an element of the environment or involve the interaction of the elements of the environment.

Information about the factor will not be environmental information unless the factor is affecting or likely to affect a component of the environment. The effect need not be detrimental or large scale; it may be small and beneficial. "Affecting" can be assessed by reference to the balance of probabilities; "likely to affect" suggests a lower test, but it must be more substantial than a remote possibility.

Such as

This paragraph in the EIR then provides examples to clarify what is intended to be covered by factors affecting or likely to affect the elements of the environment. The use of "such as" indicates that these are examples and not an exhaustive list. There may be other factors not included in these illustrations and information on them will be environmental information.

- **Substances** – includes all material or matter, natural or synthetic, and will include chemicals, pharmaceuticals, hormones, antibiotics, oil, particulates, gases and liquids.
- **Energy** – can be expressed in scientific language – thermal, chemical, electrical, kinetic, potential, gravitational. It will also include the more general use of the word, as in heat, solar energy, sunlight, windpower.
- **Noise** – although noise is itself generated by energy, it is included here separately. A simple definition of noise is, "a sound, especially one that is loud, unpleasant, or disturbing".
- **Radiation** – radiation is energy radiated or transmitted as rays, waves, or in the form of particles. It can be natural or man-made.

- **Waste** – waste can be broadly interpreted to mean anything discarded, whether or not intended for further use. This would include household, industrial, agricultural and commercial waste.
- **Radioactive waste** – radioactive materials are widely used in many situations, settings and industries. Radioactive waste is produced in a wide range of establishments and activities such as hospitals, pharmaceutical industry, research, power generation, the weapons industry and warfare.
- **Emissions, discharges and other releases** – these three terms largely overlap. “Emissions” and “discharges” indicate the direct or indirect, accidental or deliberate, release of substances, heat, radiation or noise into the air, water or land. “Release” suggests liberation, or a change of state from confined to unconfined.

(c) measures (including administrative measures), and activities affecting or likely to affect the elements and factors referred to in (a) and (b), as well as measures or activities designed to protect those elements;

Information about a measure or activity is environmental information if the measure or activity:

- affects or is likely to affect the elements of the environment;
- affects or is likely to affect a factor affecting or likely to affect an element of the environment; or
- is designed to protect the elements of the environment.

The effect need not be detrimental or large scale; it may be small and beneficial. “Affecting” can be assessed by reference to the balance of probabilities; “likely to affect” suggests a lower test, but it must be more substantial than a remote possibility.

Although there are a number of examples in the EIR to help identify measures, there are no examples of what would be an activity. There would appear to be no reason to limit the normal use of the word. “Information on activities likely to affect the elements of the environment” suggests a very broad category of environmental information.

The examples in the EIR of “measures (including administrative measures)” are policies, legislation, plans, programmes, and environmental agreements. Measures will include steps taken to ensure an effect (past, present or future), and the methods, processes or instruments used. Administrative measures are specifically mentioned, but the interpretation of measures is not restricted to those of an administrative nature. Measures will also include regulatory, economic and voluntary tools, such as Acts of Parliament, local

What is Environmental Information?

by-laws, taxes, prosecutions, charges, and voluntary agreements. Policies are not restricted to environmental policies, but will also take into account development, economic, transport, health and any other policies if they are likely to affect the environment.

As "information on" covers information about, concerning, or relating to, this definition extends not only to the written measures, but also to their application. Information held on record as a result of following processes required by a measure is also likely to be information on an activity.

Example:

Information about payments received by individual verderers under the Countryside Stewardship Scheme and legal advice obtained by the Verderers of the New Forest on the Countryside Stewardship Scheme were environmental information as information on a measure that affects or is likely to affect an element of the environment.

ICO Decision Notice [FER0148337](#) confirmed in [Rudd v Information Commissioner and The Verderers of the New Forest \(EA/2008/0020, 29/09/2008\)](#)

(d) reports on the implementation of environmental legislation;

This covers, for instance, any reports reviewing or monitoring the operation, performance, success or failure of environmental legislation. Information in this definition is also likely to fall within the definition in (c). It mainly provides clarification or further explanation of that part of the EIR.

In adopting the Aarhus convention for its own institutions the European Commission explained environmental legislation as:
"legislation which, irrespective of its legal basis, contributes to the pursuit of the objectives of ... policy on the environment ...: preserving, protecting and improving the quality of the environment, protecting human health, the prudent and rational utilisation of natural resources, and promoting measures at international level to deal with regional or worldwide environmental problems...."

(e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c);

This definition also further clarifies the definition in (c). Including economic and financial information in the definition in the Aarhus Convention stems from the recognition that it is important to integrate environmental and economic considerations in decision-making. This section is qualified by referring back to paragraph (c) measures and activities; so they are the economic and financial aspects taken into account when framing and

operating these measures and activities. It ensures that the definition of environmental information extends not only to environmental measures and activities, but also to any of their economic aspects.

(f) the state of human health and safety, including the contamination of the food chain, where relevant, 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 referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c).

In contrast to the definitions in (a), (b) and (c), the definition in (f) refers to specific fields. It can be broken down into two main areas:

- the state of human health and safety (including the contamination of the food chain where relevant to the state of human health and safety) and conditions of human life; and
- the state of cultural sites and built structures.

But these specific fields fall within the definition of environmental information only where, or to the extent that:

- they are or may be affected by the state of the elements of the environment; or
- through those elements, they are or may be affected by factors, measures or activities affecting or likely to affect the elements of the environment.

This qualification is not the same as the ones used previously. The earlier qualification referred to “affecting or likely to affect”, whereas this refers to “as they are or may be affected by”. This test will not require as much certainty. As long as some link is indicated, there need only be a possibility of an effect occurring. But the link must be “by the state of the elements of the environment” or “through the elements of the environment”.

Example:

As there was a possible link between an outbreak of E. coli infection and the disposal or treatment of waste and contamination of the water supply, a report covering this was environmental information.

[Watts v Information Commissioner \(EA/2007/0022, 6/07/2007\)](#)

“Health and safety” refers to a collective state of human health and safety. This will include information on diseases, medical conditions and risks to human safety caused or affected by a component of the environment, a factor, measure, or activity. Special mention has been made of the contamination of the food chain, which follows concerns over environmental

factors affecting our food. "Conditions of human life" will cover, for example, information on housing, poverty, employment, social welfare, heating, access to clean water, sanitation, and healthcare where these are or may be affected by the environment.

Cultural sites will include places that have a historical, literary, educational, or artistic value, and religious, ethnic, or social significance. It will cover modern as well as historical, and urban as well as rural locations. The reference to built structures allows a focus on particular buildings, as well as other infrastructure. Built infrastructure will include roads, railway lines, pylons, bridges, canals and tunnels.

Extension by regulation 5(5) of the requirement to provide information covered by the definition in 2(1)(b)

Public authorities need to be aware of the requirement in Regulation 5(5) of the EIR. This requires a public authority, when providing environmental information, to supply further information about measurement and analysis methods. This requirement applies only when a request is made for this information and only to the extent the authority can assist. Authorities are also obliged to inform the applicant where further information on measurement procedures – including methods of analysis, sampling and pre-treatment of samples – used in compiling the information can be found. As an alternative, where a standardised procedure has been used, authorities should inform the requester where details of this procedure can be found.

More information

This guidance will be reviewed and considered from time to time in line with new decisions of the Information Commissioner, Tribunal and courts on freedom of information cases. It is a guide to our general recommended approach to this area, although individual cases will always be decided on the basis of their particular circumstances.

The Department for Environment, Food and Rural Affairs is the government department responsible for oversight of the implementation of the EIR and has further guidance on its [webpages](#).

If you need any more information about this or any other aspect of freedom of information, please contact us.

Phone: 0303 123 1113

Website: www.ico.gov.uk

What should be considered when interpreting a request?

Freedom of Information Act 2000

Interpreting a request

The Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR) provide rights of public access to information held by public authorities. This is part of a series of guidance notes produced to help public authorities understand their obligations and to promote good practice.

This guidance explains what a public authority should consider when interpreting a request, and when it should ask the requester for clarification. The guidance in this document primarily refers to the FOIA but is also relevant to the EIR.

Overview

- The public authority should read the request objectively, that is, it should take care not to read into a request any meaning which is not in the plain wording.
- Where the request is not clear, or can be read in more than one way, the public authority will need to ask the requester for clarification. The authority should not try to guess what the requester might want.
- If the authority needs further clarification, there is no duty to comply with the request until this has been received. The 20-day deadline for a response begins when the authority receives the further information or clarification it needs.
- There is no requirement to seek clarification if the authority is able to comply with the request without further information. However, as a matter of good practice, the authority may contact the requester if it has any reason to believe the requester wants different or additional information from what has been requested.

What does the law say?

Section 1(3) of the FOIA states that a public authority is not obliged to comply with a request if:

- it **reasonably requires** further information before it can identify and locate the information requested; and
- it has asked the applicant for this further information.

In this case, the authority does not need to comply until or unless it has received a response which sufficiently clarifies the request.

Under section 16, the authority also has a duty to provide reasonable advice and assistance to requesters. The [Code of Practice](#) issued under section 45 of the FOIA explains that this includes assistance in clarifying unclear requests, when the authority has asked for more detail.

There are similar provisions in the EIR. Where an authority receives a request phrased "in too general a manner", regulation 9 requires the authority to help the requester provide the necessary detail. Regulation 12(4)(c) allows the authority to refuse a request if the request is too general and it has assisted the requester to provide further details.

Part III of the [EIR Code of Practice](#) provides guidance on the advice and assistance a public authority should offer.

Interpreting a request

The FOIA and EIR are applicant and motive blind, but this does not mean that the public authority cannot contact a requester to ask for clarification. A public authority is required to read a request impartially. Where the request clearly specifies the information required, the authority's background knowledge of the requester or their interests should not affect the information they receive. Where the request is ambiguous, the authority will need to seek clarification from the requester in order to ensure that it can comply with the request properly.

You should not:

- provide the requester with the information you think they want rather than what the request asks for;
- try to guess the meaning of an ambiguous request, make assumptions, or attempt to work it out from your background knowledge of the requester;
- refuse a request on the grounds that the information would not meet the stated purpose or interest of the requester;
- refuse an otherwise clear request because the requester does not use the same terminology to describe the information as used by the public authority; or,
- refuse a request because the requester uses derogatory language or because the request is intended to make a point, unless it is vexatious. See our guidance on how to identify [vexatious requests](#).

Example:

National Savings & Investments (NS&I) refused a request because the information it thought would be most helpful to the complainant was exempt. Later it provided different information from what had been requested, according to its knowledge of the requester's interests. The Information Tribunal reminded NS&I that there is no provision for a public authority to "appease what they consider the motive to be behind the request, instead of answering the request itself" or to "fail to comply because they feel that the applicant will not be content with the answer". [Mr L Meunier v IC and National Savings & Investments](#) (EA/2006/0059; 5 June 2007).

Example:

A requester asked for information about five instances of what he described as “failed standards” on the part of the then Inland Revenue. The authority claimed that it held no information about the failures because it did not accept that there had been failures. The Information Tribunal rejected this argument, stating that “any reasonable public authority” would have understood the request to relate to the five areas listed, and that the response was influenced by past disputes with the requester. [Mr E Barber v IC](#) (EA/2005/004; 11 November 2005).

Requests that do not require clarification

Where a request specifies certain information or documents, and has a single clear objective meaning, the authority will comply with the FOIA by responding to the obvious meaning of the request.

In the majority of cases, requests should be read in isolation. There is no need to speculate as to additional or alternative meanings, nor to check any previous correspondence from the requester, unless the requester has drawn attention to it or specified that the request should be read in this context.

Example:

North Norfolk District Council could not be expected to know that a request under the EIR for information about the development of North Lodge Park was intended to cover a nearby building outside the park. The request was “absolutely clear and unambiguous” and the council had no obligation to “second guess”. [Mr C Boddy v IC and North Norfolk District Council](#) (EA/2007/0074; 23 June 2008).

Nevertheless, an authority should be as helpful as possible in dealing with a request. Even where the request is clear, it is good practice to contact the requester to confirm that you have received their request and to check that you have understood it correctly.

Asking for clarification

If the public authority is unable to identify and locate the information being requested, it will need to ask the requester for clarification. This could arise where the request:

- can be read in more than one way;
- does not have an obvious interpretation;
- is so general and open-ended that it is impossible to determine what information falls within its scope; or
- is rendered unclear by the context.

The authority should always ask for clarification in any of these circumstances to ensure that it can comply with the request properly.

Example:

National Savings & Investments received a request for “all informations [*sic*] about the last three months of declared Premium Bonds Winners”. The Tribunal found the authority was wrong to assume this referred to the names and addresses of winners. Instead, NS&I should have asked for clarification. [Mr L Meunier v IC and National Savings & Investments](#) (EA/2006/0059; 5 June 2007).

An authority may be found in breach of the FOIA even though it has responded correctly to one possible objective reading of the request, if there is also an alternative meaning which is equally correct.

Example:

The London Borough of Richmond received a request containing the phrase “...all working papers and documents attached to agendas”. The Information Tribunal found that the council had breached the FOIA in only considering working papers that were attached to agendas, even though this was an objective reading. They had failed to identify the alternative meaning, which would include all working papers. [Mr A Berend v IC and LBC Richmond upon Thames](#) (EA/2006/0049 & 0050; 12 July 2007).

An authority can (but is not required to) seek clarification in any case where it may be helpful, even if it is able to respond to the request without further information.

When asking for clarification, the authority must make sure that:

- the purpose of asking for clarification is only to ensure that the authority understands what information the requester wants;
- it does not give the impression that the requester is obliged to explain their reasons for making the request; and,
- the individual's interest in the information is only taken into account in so far as it helps to determine the scope of the request; it should not have any bearing on the authority's response.

The public authority should inform the requester promptly if it requires further information or clarification before it can comply with the request. In this case, the authority has a duty to provide advice and assistance to the requester in reformulating or clarifying their request. The Codes of Practice under the FOIA and the EIR give recommendations on how to provide advice and assistance.

Reading a request in context

Requests for information should usually be read in isolation, but there are some cases in which an authority may have no choice but to read a request in the light of previous or ongoing correspondence. This could occur, for

example, where the requester specifically refers to a previous letter. If this makes the request ambiguous, the authority should ask for clarification.

Example:

“Please send me all the legal advice you have received relating to the development of Anywhere Hall”

- This request is clear and unambiguous

“Please send me all the legal advice you have received relating to the development of Anywhere Hall, as listed in your letter of 11 August”

- This request may be ambiguous, for example if the letter of 11 August listed advice about a different property.

Where the request makes sense on its own, and the requester does not draw attention to previous correspondence, the authority is not required to ask for clarification. However, the authority may choose to do so if its prior knowledge of the requester suggests that they want different or additional information from what has been requested.

Time for compliance

The normal time limit for responding to a request for information, either under the FOIA or the EIR, is 20 working days. Where the authority can comply with the request as it stands and does not need clarification, it may contact the requester to make sure it is providing the information they want, but the duty to comply within 20 working days will still apply.

Where an authority reasonably requires further information or clarification before it is able to respond to a request, it must contact the requester within 20 days to inform them of this and provide assistance. The authority has no duty to comply with the request until the further information or clarification has been received. FOIA section 10(6)(b) specifies that the 20-day period for compliance with the request begins when the authority receives the information it requires to identify and locate the information requested.

Environmental information

Public authorities should be aware that the wording of regulation 9 differs from that of the FOIA, in that it refers to requests formulated “in too general a manner”.

As stated above, the usual time limit for responding under the EIR is 20 working days. If the authority has reasonably asked for clarification and has not received it, the authority has no duty to respond.

However, an authority may also refuse a request under regulation 12(4)(c) where it has complied with its duty to assist the requester in reformulating their request but the request is still too general. In this case, the authority should send the requester a formal refusal notice explaining that it is relying on this exception. This exception is subject to the public interest test.

Other useful guidance

- [Code of Practice on the discharge of public authorities' functions under Part I of the Freedom of Information Act 2000](#)
- [Code of Practice on the discharge of the obligations of public authorities under the Environmental Information Regulations 2004](#)
- [Advice and assistance](#)
- [Vexatious and repeated requests](#)

More information

This guidance will be reviewed and considered from time to time in line with new decisions of the Information Commissioner, Tribunal and courts on freedom of information cases. It is a guide to our general recommended approach to this area, although individual cases will always be decided on the basis of their particular circumstances.

If you need any more information about this or any other aspect of freedom of information, please contact us.

Phone: 0303 123 1113

Website: www.ico.gov.uk

When can a request be considered vexatious or repeated?

Freedom of Information Act 2000

Vexatious or repeated requests

The Freedom of Information Act 2000 (FOIA) gives rights of public access to information held by public authorities. This is part of a series of guidance notes to help public authorities understand their obligations and to promote good practice.

This guidance will help public authorities understand when a request can be considered vexatious or repeated under section 14 of the FOIA, and how to use that section. See also [Vexatious requests – a short guide](#).

It first explains when requests may be vexatious (page 2) or repeated (page 8). It will then cover how to refuse these requests (page 10) and other procedural and good practice issues (page 10).

This guidance replaces Awareness Guidance 22.

Overview

- Under section 14(1), public authorities do not have to comply with vexatious requests. There is no public interest test.
- Deciding whether a request is vexatious is a balancing exercise, taking into account the context and history of the request. The key question is whether the request is likely to cause unjustified distress, disruption or irritation. In particular, you should consider the following questions:
 - Could the request fairly be seen as obsessive?
 - Is the request harassing the authority or causing distress to staff?
 - Would complying with the request impose a significant burden?
 - Is the request designed to cause disruption or annoyance?
 - Does the request lack any serious purpose or value?
- Under section 14(2), public authorities do not have to comply with repeated requests for the same information from the same person. There is no public interest test.
- If the cost of compliance is the only or main issue, you should consider section 12 instead (exemption where cost of compliance exceeds appropriate limit).

- Remember that you can also avoid unwanted requests by voluntarily publishing any frequently requested information.

General principles of section 14

Section 14 of the FOIA is intended to protect public authorities from those who might abuse the right to request information. It states:

14.—(1) Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.

(2) Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.

The section is similar to an absolute exemption. If a request is vexatious or repeated, you do not have to provide any information or confirm or deny whether you hold it. There is no need to consider a public interest test. However, you must in most cases issue a refusal notice.

We recognise that having to deal with clearly unreasonable requests can strain your organisation's resources, damage the credibility of the FOIA and get in the way of answering other requests. We would encourage you to consider section 14 where there are genuine grounds for considering a request to be vexatious or repeated.

Is the request vexatious?

The term "vexatious" is intended to have its ordinary meaning and there is no link with legal definitions from other contexts (eg vexatious litigants). Deciding whether a request is vexatious is a flexible balancing exercise, taking into account all the circumstances of the case. There is no rigid test or definition, and it will often be easy to recognise. The key question is whether the request is likely to cause distress, disruption or irritation, without any proper or justified cause.

To help you identify a vexatious request, we recommend that you consider the following questions, taking into account the context and history of the request:

- Can the request fairly be seen as obsessive?
- Is the request harassing the authority or causing distress to staff?
- Would complying with the request impose a significant burden?
- Is the request designed to cause disruption or annoyance?
- Does the request lack any serious purpose or value?

To judge a request vexatious, you should usually be able to make relatively strong arguments under more than one of these headings.

The questions are likely to overlap, and the weight you can place on each will depend on the circumstances. You do not need to be able to answer yes to every question, and may also consider other case-specific factors. However, if you consider each of the questions in turn, you should be able to more easily and consistently assess the overall balance of the case.

Context and history

You should take account of the wider context and history of the request when considering the questions. A request may not be vexatious in isolation, but when considered in context (for example if it is the latest in a long series of overlapping requests or other correspondence) it may form part of a wider pattern of behaviour that makes it vexatious.

Example

In [Betts v Information Commissioner EA/2007/0109 \(19 May 2008\)](#), the request concerned health and safety policies and risk assessments. There was nothing vexatious in the content of the request itself. However, there had been a dispute between the council and the requester which had resulted in ongoing FOIA requests and persistent correspondence over two years. These continued despite the council's disclosures and explanations. Although the latest request was not vexatious in isolation, the Tribunal considered that it was vexatious when viewed in context. It was a continuation of a pattern of behaviour and part of an ongoing campaign to pressure the council. The request on its own may have been simple, but experience showed it was very likely to lead to further correspondence, requests and complaints. Given the wider context and history, the request was harassing, likely to impose a significant burden, and obsessive.

The context of the request may also occasionally indicate that it should not be considered vexatious. For example, your previous dealings with a requester may show that they have a good reason for making persistent requests.

Your knowledge of the requester's circumstances may also affect your obligations as a service provider under the Disability Discrimination Acts. Many previous cases of vexatious requests have been in the context of a longstanding grievance or dispute. However, a request will not automatically be vexatious simply because it is made in the context of a dispute or forms part of a series of requests. There may be genuine reasons for this. For

example, a series of successive linked requests may be necessary where disclosures are unclear or raise further questions that the requester could not have foreseen. Similarly, in the context of a dispute, a request may be a reasonable way to obtain new information not otherwise available to the individual. You should not use section 14 as an excuse to avoid awkward questions that have not yet been resolved satisfactorily. You must always look at the effect of the particular request and consider the questions set out below.

An important point to note here is that it is the request – not the requester – that must be vexatious. You cannot judge a request to be vexatious just because the individual concerned has caused problems in the past. Nonetheless, the past behaviour of the requester will be relevant if the request continues that behaviour.

Can the request fairly be seen as obsessive?

Obsessive requests are usually a very strong indication of vexatiousness. An obsessive request will typically fall into several other categories as well. The wider context and history of a request will be particularly important here, as it is unlikely that a one-off request could ever be obsessive. Relevant factors could include the volume and frequency of correspondence, requests for information the requester has already seen, or a clear intention to use the request to reopen issues that have already been debated and considered.

Example

In [Ahilathirunayagam v Information Commissioner and London Metropolitan University EA/2006/0070 \(20 June 2007\)](#) the requester had been arguing with the university for 13 years over the award of his degree. He had already exhausted the university's appeal procedure, instructed two firms of solicitors, tried to pursue a court case, and complained to the ICO, his MP and the Lord Chancellor's Department. In finding his latest FOI request vexatious, the Tribunal took into account the fact that he was requesting information he already possessed and seemed to want simply to reopen issues that had already been disputed several times before.

Example

In [Hossack v Information Commissioner and DWP EA/2007/0024 \(18 December 2007\)](#) the requester had complained after a jobcentre revealed benefit details in breach of the Data Protection Act 1998. The complaint had been investigated and compensation had been paid, and an independent ombudsman's recommendations had been accepted. However, the requester continued a four-year public campaign against the authority, alleging corruption and fraud, threatening legal action and "naming and shaming" individuals. The Tribunal found that the latest FOI requests were obsessive and vexatious. The request was for information the requester already possessed, and was part of a wider campaign which was lengthy and aggressive and showed an endless wish to debate the original issue, each time trying to escalate its importance and gravity, despite the apology and compensation already provided.

It will be easiest to identify an obsessive request where an individual continues with a lengthy series of linked requests even though they already have independent evidence on the issue (eg reports from an independent investigation). The more independent evidence available, the stronger this argument will be.

Example

In [Welsh v Information Commissioner EA/2007/0088 \(16 April 2008\)](#), the requester had made a complaint against his GP. The GP's practice, the GMC, the primary care trust and the Healthcare Commission had all investigated the complaint and rejected it. He continued to write to the GP's practice reiterating the complaint and requesting details of the GP's training. The Tribunal found that the request was vexatious: "Mr Welsh simply ignores the results of three separate clinical investigations into his allegation... that unwillingness to accept or engage with contrary evidence is an indicator of someone obsessed with his particular viewpoint, to the exclusion of any other... it is the persistence of [the] complaints, in the teeth of the findings of independent and external investigations, that makes this request, against that background and context, vexatious."

Example

In [Coggins v Information Commissioner EA/2007/0130 \(13 May 2008\)](#), the requester suspected that the council had fraudulently charged an elderly lady for care services not provided. Despite a council investigation, a Committee for Social Care investigation and the police all finding no evidence of dishonesty, the requester persisted with the allegations and submitted 20 requests in 73 letters and 17 postcards over a two-year period. The Tribunal found the request obsessive and vexatious.

If an individual repeatedly submits requests for information already provided (or refused), you should consider whether you could refuse these requests as repeated requests under section 14(2) instead (see page 8 below).

Is the request harassing the authority or causing distress to staff?

The focus should be on the likely effect of the request (seen in context), not on the requester's intention. It is an objective test – a reasonable person must be likely to regard the request as harassing or distressing. Relevant factors under this heading could include the volume and frequency of correspondence, the use of hostile, abusive or offensive language, an unreasonable fixation on an individual member of staff, or mingling requests with accusations and complaints.

Example

In [Gowers v Information Commissioner and LB Camden EA/2007/0114 \(13 May 2008\)](#) the requester made various requests and complaints about the alleged incompetence of the council in ongoing correspondence. He made personal accusations against a particular member of staff and attempted to identify their spouse through FOI requests and other means. In finding the latest request vexatious, one factor the Tribunal took into account was that the correspondence "would likely have been seen by any reasonable recipient as hostile, provocative and often personal" and that "the requests are likely to have been very upsetting to the staff and that they... are likely to have felt deliberately targeted and victimised".

The relevant issue here is the request itself, not the information that might be disclosed in response. The question is whether having to deal with the request would be distressing or harassing, regardless of what the request is about. The fact that disclosure of certain information would be embarrassing or distressing cannot make a request vexatious. The Tribunal confirmed in [Betts](#) that: "distress, annoyance, irritation or worry arising from the possible

consequences of disclosure cannot turn an otherwise proper request into a vexatious one; indeed that would defeat the purpose of FOIA”.

Would complying with the request impose a significant burden?

You need to consider more than just the cost of compliance. You will also need to consider whether responding would divert or distract staff from their usual work.

Example

In [Coggins](#), the requester had sent 20 requests, 73 letters and 17 postcards over a two-year period. The letters were to several different employees and overlapped with each other. Requests were repeated before any response could be issued. The Tribunal decided that dealing with this correspondence would have been a significant distraction from the public authority’s core functions and imposed a significant administrative burden.

The wider context of a request is likely to be relevant here. You may be able to conclude that responding to a relatively simple request would still impose a significant burden because any response would be very likely to lead to a significant number of further requests and complaints. However, you would need to be able to support this argument with evidence from extensive previous experience with the individual concerned.

This factor will not be enough on its own to show vexatiousness. If your only or main concern is the cost of compliance, you should consider section 12 rather than section 14. Under section 12, you can refuse a request if finding and extracting the relevant information would cost more than a set limit (currently £450, or £600 for central government). You can also combine the total cost for all requests received from one person (or from several people acting together) during a period of 60 working days – roughly three months – as long as the requests relate to similar information.

For more information on using section 12, see our guidance on [Using the Fees Regulations](#) and [Redacting and extracting information](#).

Is the request designed to cause disruption or annoyance?

As this factor relates to the requester’s intention, it can be difficult to prove. Cases where this is a strong argument are therefore likely to be rare. However, if a requester explicitly states that they want to cause maximum inconvenience, the request will almost certainly be vexatious.

Example

In ICO decision notice [FS50151851](#) the request included the statement: "I am insincere and my purpose is mischievous subversion." Taking this statement with the volume, length and unfocussed nature of the correspondence, it was fair to conclude that the request was designed to cause disruption or annoyance.

Alternatively, if you have independent evidence that the requester wants to disrupt or deliberately annoy the authority by making requests, this may be relevant. For example, a requester may have threatened to disrupt the authority during a previous complaint or dispute, or may be involved with a campaign group that has publicly stated it intends to disrupt an authority as part of its campaign.

Does the request lack any serious purpose or value?

If a request clearly lacks any serious purpose or value, it may help an argument that the request is vexatious when taken together with other factors (eg if the request is also obsessive, harassing or burdensome). However, an apparent lack of serious purpose or value is not enough on its own to make a request vexatious. The FOIA is not generally concerned with the motives of the applicant, but with transparency for its own sake. You should therefore not dismiss a request solely for this reason, and should be aware that even a request that seems spurious or tedious to you may have genuine value to the individual.

It is not appropriate to use lack of value as an argument simply because you cannot imagine what the value might be. You must demonstrate that a request has no purpose or value, rather than simply suggest that because the requester did not provide a reason there cannot be one.

On the other hand, if a request does have a serious purpose or value, this may be enough to prevent it being vexatious, even if it imposes a significant burden and is harassing or distressing your staff. If the request forms part of a wider campaign or pattern of requests, the serious and proper purpose must justify both the request itself and the lengths to which the campaign or pattern of behaviour has been taken.

Example

In [Coggins](#), the Tribunal found that the requester had a reasonable and genuine desire to uncover a fraud, and this amounted to a serious and proper purpose that could potentially override the harassing and burdensome nature of the request, so that it ought not to be considered vexatious. However, despite the original serious and proper purpose, the requests had now become obsessive after three independent enquiries into the issue and there came a time when the requester should have let the matter drop. Continuing his campaign was no longer justifiable and, on balance, the latest request was vexatious.

The question of whether a serious and proper purpose can continue to justify an ongoing campaign or series of requests will overlap with the question of whether the latest request can fairly be seen as obsessive. If a request is obsessive (eg if the issue has already been fully considered and debated with the applicant) then it is unlikely that there can be any continuing justification for that request.

Is the request repeated?

There is also a separate provision relating to repeated requests. Under section 14(2), a request can be refused as repeated if:

- it is made by the same person as a previous request;
- it is identical or substantially similar to the previous request; and
- no reasonable interval has elapsed since the previous request.

To be repeated, the requests must have been submitted by the same person. You cannot refuse similar requests as repeated if they are submitted by different requesters. However, you may be able instead to refuse them as vexatious (if part of a campaign to cause disruption or distress) or under section 12 (if the requesters are acting together and compliance would exceed the cost limit).

Identical or substantially similar

Both the wording of the request itself and the information that would be provided in response will be relevant here.

Where the wording of the request is identical to a previous request and it is asking for the same information (ie information already provided or refused), you can regard the request as repeated. However, if the wording is identical but the request is actually asking for different information (eg a recurring request asking for “any new or amended information” on a particular subject, or for “last month’s figures”), you cannot refuse the request as repeated.

Similarly, a request will be substantially similar to a previous request only if you would need to disclose substantially similar information to respond to both requests (ie with no meaningful differences). You should not refuse a request simply because it relates to the same subject or theme as a previous request, unless you would have to give the same information in response. If only some of the information you need to disclose is different, you should comply with the request, but you may want to supply only the new information and class the rest of the request as repeated.

If the request is for information recently refused, you should treat the request as a request for internal review of your original decision.

Reasonable interval

Even if the request is the same as or substantially similar to a previous request, you cannot refuse it as repeated if a reasonable interval has passed. What is a reasonable interval will largely depend on the circumstances, including:

- how likely the information is to change;
- how often records are updated; and
- any advice previously given to the requester (eg on when new information is likely to be available).

For example, it may be reasonable for a requester to resubmit a request after a relatively short time for statistics or other records that you would expect to be updated often, but not for purely historical records. On the other hand, if the requester has been told when information is due to change, it would not generally be reasonable for them to resubmit a request before that time.

If you previously refused the requested information under a qualified exemption, you should also consider whether the passage of time could possibly affect the public interest test for that exemption. If there is any possibility that previously exempt information may no longer be exempt, you must not refuse the request as repeated. You should reconsider disclosure in the usual way.

Refusing the request

If you decide that a request is vexatious or repeated, you must issue a refusal notice to the requester within 20 working days. The refusal notice should state that you are relying on section 14(1) or 14(2) and give details of your internal review procedures and the right to appeal to the ICO. However, section 17(6) says you will not need to issue a new refusal notice if:

- you have already given the same person a refusal notice for a previous vexatious or repeated request; and

- it would be unreasonable to issue another one.

Refusing a request as vexatious or repeated is particularly likely to lead to an internal review or an appeal to the ICO. Whether or not you issue a refusal notice, you should therefore keep written records clearly setting out the procedure you followed and your reasons for judging the request as vexatious or repeated, so that you can justify your decision to us if necessary.

For more information on refusals, see our guidance on [Refusal notices](#).

Good practice

In some circumstances you may be able to deal with difficult requests in a less contentious way. To help you avoid unnecessary disputes over vexatious requests, you may want to consider the following alternatives:

- Is the request clear enough? If the request is unclear and you are unsure what (if any) information has been requested, you can contact the requester and ask them to clarify the request. Under section 1(3), you will not then have to comply with the request until you have received that clarification. This may be particularly helpful for lengthy correspondence that contains a confusing mixture of questions, complaints and other content, or is otherwise incoherent or illegible.
- In borderline cases, you may want to consider complying with the request to prevent a more time-consuming dispute developing, but advising the requester that a future request could be seen as vexatious if they continue the same pattern of behaviour.
- If you are confident that the request is vexatious, you may choose to refuse the request but spell out what the requester could do differently in future to ensure you deal with their request.

For more information on clarification and the duty to provide advice and assistance, see [Advice and assistance: Awareness guidance 23](#).

If you receive lots of requests for information on a particular subject or similar theme, you should consider voluntarily publishing the information as part of your publication scheme. This may reduce the number of unwanted or repeated requests you receive.

You should be aware that you cannot use section 14 to refuse any request for information that should be published under your publication scheme. You will need to provide this information, or direct the requester to where it is available. For more information on publication schemes, see [our website](#).

Other considerations

You need to take care to distinguish between FOI requests and requests for the individual's own personal data. If a requester has asked for information relating to themselves, you should deal with the request as a subject access request under the Data Protection Act 1998. A subject access request cannot be vexatious (although there is an exception for repeated requests). For more information on subject access requests, see our [Checklist for handling requests for personal information \(subject access requests\)](#).

More information

This guidance will be reviewed and considered from time to time in line with new decisions of the Information Commissioner, Tribunal and courts on freedom of information cases. It is a guide to our general recommended approach to this area, although individual cases will always be decided on the basis of their particular circumstances.

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