Biddick Hall Infant and Nursery School

Freedom of Information Act

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Biddick Hall Infant and Nursery School
The Freedom of Information Act 2000
Policy

Contents

Principles of the Freedom of Information Act

The main principal behind the Freedom of information act is that people have the right to know about the activities of public authorities, unless there is a good reason for them not to.
This means that:

- Everyone has a right to access official information. Disclosure of information should be the default setting. Information should only be kept private when there is a good reason and it is not permitted by the act.
- A requestor does not need to give a reason for wanting the information. You must provide a reason for refusing the information.
- All requests should be treat equally, except under some circumstances relating to vexatious requests and personal dat. The information that someone receives should not be affected by who they are. All requestors should be treat equally, whether they are journalists, local residents, public authority employees or foreign researches.
- Due to treating all requests equally, you should only disclose information under the act if you would disclose it to anyone else who asked. You should consider any information that you release as if it were being released to the world at large.
- However, this does not prevent you voluntarily giving out information to certain people outside the provisions of the act.

Public Authorities

The freedom of information act only covers public authorities, which a school is one.

What information is covered by the act

The act covers all recorded information held by the school. This is not limited to official documents and it covers for example drafts, emails, notes, recordings of telephone conversations and CCTV recordings. Nor is it limited to information you create, so it also covers as an example, letters you receive from the member of the public, although there may be a good reason for you not to disclose this information.
The Act includes some specific requirements to do with datasets
Requests are sometimes made for less obvious sources of recorded information, such as the author and date of drafting, found in the properties of a document (sometimes called meta-data). This information is recorded so is covered by the Act and you must consider it for release in the normal way.
Similarly, you should treat requests for recorded information about the handling of previous freedom of information requests (meta-requests) no differently from any other request for recorded information.
If a member of the public asks for information, you only have to provide information you already have in recorded form. You do not have to create new information or find the answer to a question from staff who may happen to know it.
Where you subcontract public services to an external company, that company may then hold information on your behalf, depending on the type of information and your contract with them. Some of the information held by the external company may be covered by the Act if you receive a freedom of information request. The company does not have to answer any requests for information it receives, but it would be good practice for them to forward the requests to you. The same applies where you receive services under a contract, for example, if you consult external solicitors.

The Act does not cover information you hold solely on behalf of another person, body or organisation. This means employees' purely private information is not covered, even if it is on a work computer or email account; nor is information you store solely on behalf of a trade union, or an individual MP or councillor.

The Act only covers recorded information you hold. When compiling a response to a request for information, you may have to draw from multiple sources of information you hold, but you don't have to make up an answer or find out information from elsewhere if you don't already have the relevant information in recorded form.

Before you decide that you don't hold any recorded information, you should make sure that you have carried out adequate and properly directed searches, and that you have convincing reasons for concluding that no recorded information is held. If an applicant complains to the ICO that you haven't identified all the information you hold, we will consider the scope, quality and thoroughness of your searches and test the strength of your reasoning and conclusions.

If you don't have the information the requester has asked for, you can comply with the request by telling them this, in writing. If you know that the information is held by another public authority, you could transfer the request to them or advise the requester to redirect their request.

Making a request

Anyone can make a freedom of information request - they do not have to be UK citizens, or resident in the UK. Freedom of information requests can also be made by organisations, for example a newspaper, a campaign group, or a company. Employees of a public authority can make requests to their own employer, although good internal communications and staff relations will normally avoid the need for this.

Requesters should direct their requests for information to the public authority they think will hold the information. The public authority that receives the request is responsible for responding. Requests should not be sent to the Information Commissioner's Office (ICO), except where the requester wants information the ICO holds.

To be valid under the Act, the request must:

- be in writing. This could be a letter or email. Requests can also be made via the web, or even on social networking sites such as Facebook or Twitter if your public authority uses these;
- include the requester's real name. The Act treats all requesters alike, so you should not normally seek to verify the requester's identity. However, you may decide to check their identity if it is clear they are using a pseudonym or if there are legitimate grounds for refusing their request and you suspect they are trying to avoid this happening, for example because their request is vexatious or repeated. Remember that a request can be made in the name of an organisation, or by one person on behalf of another, such as a solicitor on behalf of a client;
- include an address for correspondence. This need not be the person's residential or work address - it can be any address at which you can write to them, including a postal address or email address;
- describe the information requested. Any genuine attempt to describe the information will be enough to trigger the Act, even if the description is unclear, or you think it is too broad or unreasonable in some way. The Act covers information not documents, so a requester does not have to ask for a specific document (although they may do so). They can, for example, ask about a specific topic and expect you to gather the relevant information to answer their enquiry. Or they might describe other features of the information (eg author, date or type of document).

- Almost anything in writing which asks for information will count as a request under the Act. The Act contains other provisions to deal with requests which are too broad, unclear or unreasonable.

- Even if a request is not valid under the Freedom of Information Act, this does not necessarily mean you can ignore it. Requests for 'environmental information', for example, can be made verbally. You also have an obligation to provide advice and assistance to requesters. Where somebody seems to be requesting information but has failed to make a valid freedom of information request, you should draw their attention to their rights under the Act and tell them how to make a valid request.

- a question can be a valid request for information. It is important to be aware of this so that you can identify requests and send them promptly to the correct person.

- Under the Act, if you have information in your records that answers the question you should provide it in response to the request. You are not required to answer a question if you do not already have the relevant information in recorded form.

- In practice this can be a difficult area for public authorities. Many of those who ask questions just want a simple answer, not all the recorded information you hold. It can be frustrating for applicants to receive a formal response under the Act stating that you hold no recorded information, when this doesn't answer their simple question. However, requesters do have a right to all the relevant recorded information you hold, and some may be equally frustrated if you take a less formal approach and fail to provide recorded information.

- The best way round this is usually to speak to the applicant, explain to them how the Act works, and find out what they want. You should also remember that even though the Act requires you to provide recorded information, this doesn't prevent you providing answers or explanations as well, as a matter of normal customer service.

- The Information Commissioner's Office (ICO) recognises that some public authorities may initially respond to questions informally, but we will expect you to consider your obligations under the Act as soon as it becomes clear that the applicant is dissatisfied with this approach. Ultimately, if there is a complaint to the ICO, the Commissioner will make her decision based on whether recorded information is held and has been provided.

Obligations under the Act

You have two main obligations under the Act. You must:

- publish certain information proactively - see publication scheme
- respond to requests for information - 20 working days from receiving the request.

  - Your main obligation under the Act is to respond to requests promptly, with a time limit acting as the longest time you can take. Under the Act, most public authorities may take up to 20 working days to respond, counting the first working day after the request is received as the first day. For schools, the standard time limit is 20 school days, or 60 working days if this is shorter.
  - Working day means any day other than a Saturday, Sunday, or public holidays and bank holidays; this may or may not be the same as the days you are open for business or staff are in work.
  - The time allowed for complying with a request starts when your organisation receives it, not when it reaches the freedom of information officer or other relevant member of staff.
  - However, in all cases you must give the requester a written response within the standard time limit for compliance.
  - The Act does not allow extra time for searching for information. However, if finding the information and drawing it together to answer the request would be an unreasonable burden on your resources and exceed a set costs limit, you may be able to refuse the request. Likewise, you may not have to confirm whether or not you hold the information, if it would exceed the costs limit to determine this.
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- In addition, three codes of practice contain recommended good practice when applying the Act.

  The section 45 code of practice gives recommendations for public authorities about their handling of requests. It covers the situations in which you should give advice and assistance to those making requests; the complaints procedures you should put in place; and various considerations that may affect your relationships with other public bodies or third parties.

  There is an additional section 45 code of practice on datasets. This provides guidance to public authorities on how to meet their obligations in relation to the dataset provisions in sections 11, 11A, 11B and 19 of the Act.

  The section 46 code of practice covers good records management practice and the obligations of public authorities under the Public Records Acts to maintain their records in an ordered and managed way, so that they can readily retrieve information when it is needed.

  These codes of practice are not directly legally binding but failure to follow them is likely to lead to breaches of the Act. In particular there is a link between following part II of the section 45 code of practice and complying with section 16 of the Act. Section 16 requires you to provide applicants with reasonable advice and assistance. This includes advice and assistance to members of the public before they have made their request.

  First, read the request carefully and make sure you know what is being asked for. You must not simply give the requester information you think may be helpful; you must consider all the information that falls within the scope of the request, so identify this first. Always consider contacting the applicant to check that you have understood their request correctly.

  You should read a request objectively. Do not get diverted by the tone of the language the requester has used, your previous experience of them (unless they explicitly refer you to this) or what you think they would be most interested in.

Requests are often ambiguous, with many potential interpretations, or no clear meaning at all. If you can't answer the request because you are not sure what is being requested, you must contact the requester as soon as possible for clarification.

You do not have to deal with the request until you have received whatever clarification you reasonably need. However, you must consider whether you can give the requester advice and assistance to enable them to clarify or rephrase their request. For example, you could explain what options may be available to them and ask whether any of these would adequately answer their request.

You have two duties when responding to requests for information: to let the requester know whether you hold the information, and to provide the information. If you are giving out all the information you hold, this will fulfil both these duties. If you are refusing all or part of the request, you will normally still have to confirm whether you hold (further) information. You do not need to give a description of this information; you only have to say whether you have any (further) information that falls within the scope of the request.

In some circumstances, you can refuse to confirm or deny whether you hold any information. For example, if a requester asks you about evidence of criminal activity by a named individual, saying whether you hold such information could be unfair to the individual and could prejudice any police investigation. We call this a 'neither confirm nor deny' (NCND) response.

You must release the information unless there is good reason not to.

The Act covers recorded information, whether or not it is accurate. You cannot refuse a request for information simply because you know the information is out of date, incomplete or inaccurate. To avoid misleading the requester, you should normally be able to explain to them the nature of the information, or provide extra information to help put the information into context.

When considering complaints against a public authority, the ICO will normally reject arguments that inaccurate information should not be disclosed. However, in a few cases there may be strong and persuasive arguments for refusing a request on these grounds if these are specifically tied to an exemption in the Act. It will be up to you to identify such arguments.

You should normally disclose the information you held at the time of the request. You are allowed to make routine changes to the information while you are dealing with the request as long as these would have been made regardless of the request. However, it would not be good practice to go ahead with a scheduled deletion of information if you know it has been requested.

You must not make any changes or deletions as a result of the request, for example, because you are concerned that some of the information could be embarrassing if it were released. This is a criminal offence.

There are a number of ways you could make information available, including by email, as a printed copy, on a disk, or by arranging for the requester to view the information. Normally, you should send the information by whatever means is most reasonable. For example, if the requester has made their request by email, and the information is an electronic document in a standard form, then it would be reasonable for you to reply by email and attach the information.

However, requesters have the right to specify their preferred means of communication, in their initial request. So you should check the original request for any preferences before sending out the information.

You may also want to consider whether you would like to include anything else with the information, such as a copyright notice for third party information, or explanation and background context.

Remember that disclosures under the Act are 'to the world', so anyone may see the information.

If the information that you are making available is a dataset, and the requester has expressed a preference for an electronic copy, then, so far as reasonably practicable, you must provide the dataset in a re-usable form.

If your authority is also a public sector body under the Re-use of Public Sector Information Regulations 2015 (RPSI) then you should deal with licensing re-use under the terms of RPSI. If RPSI does not apply you should license re-use according to the dataset provisions in the Act. These say that if the dataset is a 'relevant copyright work' and you are the only owner of the copyright or database rights, then you must make it available under a licence that permits re-use. The licences to use for this are specified in the section 45 code of practice on datasets. If the dataset can be re-used without charge, then the appropriate licence will usually be the Open Government Licence.

The Act does not allow you to charge a flat fee but you can recover your communication costs, such as for photocopying, printing and postage. You cannot normally charge for any other costs, such as for staff time spent searching for information, unless other relevant legislation authorises this.

However, if the cost of complying with the request would exceed the cost limit referred to in the legislation, you can offer to supply the information and recover your full costs (including staff time), rather than refusing the request.

If you wish to charge a fee, you should send the requester a fees notice. You do not have to send the information until you have received the fee. The time limit for complying with the request excludes the time spent waiting for the fee to be paid. In other words, you should issue the fees notice within the standard time for compliance. Once you have received the fee, you should send out the information within the time remaining.

If the information that you are providing is a dataset, and it is covered by the RPSI, then you may charge for permitting re-use according to RPSI. If it is not covered, for example because you are not a public sector body under RPSI, then you should deal with charging for re-use according to the dataset provisions in the Act. There is no re-use fee if you are making the datasets available for re-use under the Open Government Licence.

The Act recognises that freedom of information requests are not the only demand on the resources of a public authority. They should not be allowed to cause a drain on your time, energy and finances to the extent that they negatively affect your normal public functions.

Currently, the cost limit for complying with a request or a linked series of requests from the same person or group is set at £450 for schools. You can refuse a request if you estimate that the cost of compliance would exceed this limit. This provision is found at section 12 of the Act.

You can refuse a request if deciding whether you hold the information would mean you exceed the cost limit, for example, because it would require an extensive search in a number of locations. Otherwise, you should say whether you hold the information, even if you cannot provide the information itself under the cost ceiling.

When calculating the costs of complying, you can aggregate (total) the costs of all related requests you receive within 60 working days from the same person or from people who seem to be working together.

You are only required to estimate whether the limit would be exceeded. You do not have to do the work covered by the estimate before deciding to refuse the request. However, the estimate must be reasonable and must follow the rules below.

- determining whether you hold the information;
- finding the requested information, or records containing the information;
- retrieving the information or records; and
- extracting the requested information from records.

The biggest cost is likely to be staff time. You should rate staff time at £25 per person per hour, regardless of who does the work, including external contractors. This means a limit of 18 or 24 staff hours, depending on whether the £450 or £600 limit applies to your public authority.

You cannot take into account the time you are likely to need to decide whether exemptions apply, to redact (edit out) exempt information, or to carry out the public interest test.

However, if the cost and resources required to review and remove any exempt information are likely to be so great as to place the organisation under a grossly oppressive burden then you may be able to consider the request under Section 14 instead. (vexatious requests).

Note that although fees and the appropriate limit are both laid down in the same Regulations, the two things must not be confused:

- The cost of compliance and the appropriate limit relate to when a request can be refused.
- The fees are what you can charge when information is disclosed.

- If you wish to use section 12 (cost limit) of the Act as grounds for refusing the request, you should send the requester a written refusal notice. This should state that complying with their request would exceed the appropriate cost limit. However, you should still say whether you hold the information, unless finding this out would in itself incur costs over the limit.
- There is no official requirement for you to include an estimate of the costs in the refusal notice. However, you must give the requester reasonable advice and assistance to refine (change or narrow) their request. This will generally involve explaining why the limit would be exceeded and what information, if any, may be available within the limits.

You should not:

- give the requester part of the information requested, without giving them the chance to say which part they would prefer to receive;
- fail to let the requester know why you think you cannot provide the information within the cost limit;
- advise the requester on the wording of a narrower request but then refuse that request on the same basis; or
- tell the requester to narrow down their request without explaining what parts of their request take your costs over the limit. A more specific request may sometimes take just as long to answer. For instance, in the example above, if the requester had later asked only for expenses claims relating to hotel room service, this would also have meant searching all the records.

If the requester refines their request appropriately, you should then deal with this as a new request. The time for you to comply with the new request should start on the working day after the date you receive it.

If the requester does not want to refine their request, but instead asks you to search for information up to the costs limit, you can do this if you wish, but the Act does not require you to do so.

If complying with a request would cost you more than the £450 or £600 limit, you can refuse it outright or do the work for an extra charge.

If you choose to comply with a request costing over £450 or £600, you can charge:

- the cost of compliance (the costs allowed in calculating whether the appropriate limit is exceeded); plus
- the communication costs, plus
- £25 an hour for staff time taken for printing, copying or sending the information.

You should not do this work without getting written agreement from the requester that they will pay the extra costs. You should also give the requester the option of refining their request rather than paying extra. The 'time for compliance' clock is paused in these circumstances, until you receive payment.

As a general rule, you should not take into account the identity or intentions of a requester when considering whether to comply with a request for information. You cannot refuse a request simply because it does not seem to be of much value. However, a minority of requesters may sometimes abuse their rights under the Freedom of Information Act, which can threaten to undermine the credibility of the freedom of information system and divert resources away from more deserving requests and other public business.

You can refuse to comply with a request that is vexatious. If so, you do not have to comply with any part of it, or even confirm or deny whether you hold information. When assessing whether a request is vexatious, the Act permits you to take into account the context and history of a request, including the identity of the requester and your previous contact with them. The decision to refuse a request often follows a long series of requests and correspondence.

The key question to ask yourself is whether the request is likely to cause a disproportionate or unjustifiable level of distress, disruption or irritation.

Bear in mind that it is the request that is considered vexatious, not the requester. If after refusing a request as vexatious you receive a subsequent request from the same person, you can refuse it only if it also meets the criteria for being vexatious.

You should be prepared to find a request vexatious in legitimate circumstances, but you should exercise care when refusing someone's rights in this way.

You can refuse requests if they are repeated, whether or not they are also vexatious. You can normally refuse to comply with a request if it is identical or substantially similar to one you previously complied with from the same requester. You cannot refuse a request from the same requester just because it is for information on a related topic. You can do so only when there is a complete or substantial overlap between the two sets of information.

You cannot refuse a request as repeated once a reasonable period has passed. The reasonable period is not set down in law but depends on the circumstances, including, for example, how often the information you hold changes.

You should send the requester a written refusal notice. If the request is vexatious or repeated, you need only state that this is your decision; you do not need to explain it further. However, you should keep a record of the reasons for your decision so that you can justify it to the Information Commissioner's Office if a complaint is made.

If you are receiving vexatious or repeated requests from the same person, you can send a single refusal notice to the applicant, stating that you have found their requests to be vexatious or repeated (as appropriate) and that you will not send a written refusal in response to any further vexatious or repeated requests.

This does not mean you can ignore all future requests from this person. For example, a future request could be about a completely different topic, or have a valid purpose. You must consider whether the request is vexatious or repeated in each case.

Exemptions exist to protect information that should not be disclosed, for example because disclosing it would be harmful to another person or it would be against the public interest.

The exemptions in Part II of the Freedom of Information Act apply to information. This may mean that you can only apply an exemption to part of the information requested, or that you may need to apply different exemptions to different sections of a document.

You do not have to apply an exemption. However, you must ensure that in choosing to release information that may be exempt, you do not disclose information in breach of some other law, such as disclosing personal information in contravention of the GDPR or the DPA 2018. Nor do you have to identify all the exemptions that may apply to the same information, if you are content that one applies.

You can automatically withhold information because an exemption applies only if the exemption is 'absolute'. However, most exemptions are not absolute but are 'qualified'. This means that before deciding whether to withhold information under an exemption, you must consider the public interest arguments. This balancing exercise is usually called the public interest test (PIT). The Act requires you to disclose information unless there is good reason not to, so the exemption can only be maintained (upheld) if the public interest in doing so outweighs the public interest in disclosure.

In some cases, even confirming that information is or is not held may be sensitive. In these cases, you may be able to give a 'neither confirm nor deny' (NCND) response.

Whether you need to give a NCND response should usually depend on how the request is worded, not on whether you hold the information. You should apply the NCND response consistently, in any case where **either** confirming **or** denying could be harmful.

Unless otherwise specified, all the exemptions below also give you the option to claim an exclusion from the duty to confirm or deny whether information is held, in appropriate cases.

If you think you may need to claim an exclusion from the duty to confirm or deny whether you hold information, then you will need to consider this duty separately from the duty to provide information. You will need to do this both:

- when you decide whether an exemption applies; and
- when you apply the public interest test.

If it would be damaging to even confirm or deny if information is held, then you must issue a refusal notice explaining this to the requester. In this situation we would not expect you to go on to address the separate question of whether any information that is held should be disclosed, at this stage. You will need to do this only if the requester successfully appeals against your NCND response and you do actually hold some information.

However, if you decide that you are willing to confirm or deny whether information is held, and you do in fact hold some information, then you will need to immediately go on to consider whether that information should be disclosed.

Some exemptions apply only to a particular category or class of information, such as information held for criminal investigations or relating to correspondence with the royal family. These are called class-based exemptions.

Some exemptions require you to judge whether disclosure may cause a specific type of harm, for instance, endangering health and safety, prejudicing law enforcement, or prejudicing someone's commercial interests. These are called prejudice-based exemptions.

This distinction between 'class-based' and 'prejudice-based' is not in the wording of the Act but many people find it a useful way of thinking about the exemptions.

The Act also often refers to other legislation or common law principles, such as confidentiality, legal professional privilege, or data protection. In many cases, you may need to apply some kind of legal 'test' - it is not as straightforward as identifying that information fits a specific description. It is important to read the full wording of any exemption, and if necessary consult our guidance, before trying to rely on it.

The exemptions can be found in Part II of the Act, at sections 21 to 44.

For the purposes of the Act, 'prejudice' means causing harm in some way. Many of the exemptions listed below apply if disclosing the information you hold would harm the interests covered by the exemption. In the same way, confirming or denying whether you have the information can also cause prejudice. Deciding whether disclosure would cause prejudice is called the prejudice test.

To decide whether disclosure (or confirmation/denial) would cause prejudice:

- you must be able to identify a negative consequence of the disclosure (or confirmation/denial), and this negative consequence must be significant (more than trivial);
- you must be able to show a link between the disclosure (or confirmation/denial) and the negative consequences, showing how one would cause the other; and
- there must be at least a real possibility of the negative consequences happening, even if you can't say it is more likely than not.
    - This exemption applies if the information requested is already accessible to the requester. You could apply this if you know that the requester already has the information, or if it is already in the public domain. For this exemption, you will need to take into account any information the requester gives you about their circumstances. For example, if information is available to view in a public library in Southampton, it may be reasonably accessible to a local resident but not to somebody living in Glasgow. Similarly, an elderly or infirm requester may tell you they don't have access to the internet at home and find it difficult to go to their local library, so information available only over the internet would not be reasonably accessible to them.
    - When applying this exemption, you have a duty to confirm or deny whether you hold the information, even if you are not going to provide it. You should also tell the requester where they can get it.
    - This exemption is absolute, so you do not need to apply the public interest test

This exemption applies if, when you receive a request for information, you are preparing the material and definitely intend for it to be published, and it is reasonable not to disclose it until then. You do not need to have identified a publication date. This exemption does not necessarily apply to all draft materials or background research. It will only apply to the material you intend to be published.

You do not have to confirm whether you hold the information requested if doing so would reveal the content of the information.

This exemption is qualified by the public interest test.

Public Interest test

If the exemption you wish to apply is qualified, then you will need to do a public interest test, even if you know the exemption applies.

If you think that you may need to claim an exclusion from the duty to confirm or deny, then you will need to consider the public interest test for this duty. You will need to do this separately from the public interest test for the duty to provide information.

For 'neither confirm nor deny' cases (NCND) the public interest test involves weighing the public interest in confirming whether or not information is held against the public interest in refusing to do this. The public interest in maintaining the exclusion from the duty to confirm or deny would have to outweigh the public interest in confirming or denying that information is held, in order to justify an NCND response.

Similarly, when considering whether you should disclose information, you will need to weigh the public interest in disclosure against the public interest in maintaining the exemption. You must bear in mind that the principle behind the Act is to release information unless there is a good reason not to. To justify withholding information, the public interest in maintaining the exemption would have to outweigh the public interest in disclosure.

Note that the wording of the test refers to the public interest in maintaining the exemption (or exclusion). In other words, you cannot consider all the arguments for withholding the information (or refusing to confirm whether it is held), only those which are inherent in the exemption or exclusion ie relate directly to what it is designed to protect.

You can withhold information only if it is covered by one of the exemptions and, for qualified exemptions, the public interest in maintaining the exemption outweighs the public interest in disclosure. You must follow the steps in this order, so you cannot withhold information because you think it would be against the public interest without first identifying a specific exemption.

The law says you can have a "reasonable" extension of time to consider the public interest test. We consider that this should normally be no more than an extra 20 working days, which is 40 working days in total to deal with the request. Any extension beyond this time should be exceptional and you must be able to justify it.

To claim this extra time, you must:

- contact the requester in writing within the standard time for compliance;
- specify which exemption(s) you are seeking to rely on; and
- give an estimate of when you will have completed the public interest test.

You must identify the relevant exemptions and ensure they can be applied in this case, for example, by considering the prejudice test before you do this. You cannot use the extra time for considering whether an exemption applies. You should release any information that is not covered by an exemption within the standard time.

When you have come to a conclusion on the balance of the public interest, you should:

- disclose the information; or
- write to the requester explaining why you have found that the public interest favours maintaining the exemption.

The law says you can have a "reasonable" extension of time to consider the public interest test. We consider that this should normally be no more than an extra 20 working days, which is 40 working days in total to deal with the request. Any extension beyond this time should be exceptional and you must be able to justify it.

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- contact the requester in writing within the standard time for compliance;
- specify which exemption(s) you are seeking to rely on; and
- give an estimate of when you will have completed the public interest test.

You must identify the relevant exemptions and ensure they can be applied in this case, for example, by considering the prejudice test before you do this. You cannot use the extra time for considering whether an exemption applies. You should release any information that is not covered by an exemption within the standard time.

When you have come to a conclusion on the balance of the public interest, you should:

- disclose the information; or
- write to the requester explaining why you have found that the public interest favours maintaining the exemption.
    - If you are relying on an exemption, you must issue a written refusal notice within the standard time for compliance, specifying which exemptions you are relying on and why.
    - If you have already done a public interest test, you should explain why you have reached the conclusion that the public interest in maintaining the exemption outweighs the public interest in disclosure.
    - If you are claiming extra time to consider the public interest test, you will not be able to give a final refusal notice at this stage, but you should explain which exemptions you are relying on. If your final decision is to withhold all or part of the information, you will need to send a second refusal notice to explain your conclusion on the public interest test.
    - If you are withholding information but are still required to reveal that you hold the information, you should also remember to do this.

You must refuse requests in writing promptly or within 20 working days (or the standard time for compliance) of receiving it.

In the refusal notice you should:

- explain what provision of the Act you are relying on to refuse the request and why;
- give details of any internal review (complaints) procedure you offer or state that you do not have one; and
- explain the requester's right to complain to the ICO, including contact details for this.

The model publication scheme is a short document setting out your high-level commitment to proactively publish information, and any costs for providing this information. It is suitable for all sectors and consists of seven commitments and seven classes of information.

The model publication scheme commits you to publish certain classes of information. It also specifies how you should make the information available, what you can charge, and what you need to tell members of the public about the scheme.

The Act is designed to increase transparency. Members of the public should be able to routinely access information that is in the public interest and is safe to disclose. Also, without the publication scheme, members of the public may not know what information you have available.

The publication scheme covers information you have already decided you can give out. People should be able to access this information directly on the web, or receive it promptly and automatically whenever they ask.

The Act does not specify how much you can charge for information published in accordance with a publication scheme (this is different from the rule for information released in response to a request However, you must publish a list of charges indicating when you will charge and how much. You will not be able to charge if you have not indicated this in advance.

The ICO model publication scheme requires any fee to be justified, transparent and kept to a minimum. As a general rule, you can only make the following charges:

- for communicating the information, such as photocopying and postage. We do not consider it reasonable to charge for providing information online;
- fees permitted by other legislation; and
- for information produced commercially, for example, a book, map or similar publication that you intend to sell and would not otherwise have produced.

If you make a dataset available for re-use under your publication scheme, and it is covered by RPSI, then you may charge for permitting re-use according to RPSI. If it is not covered, for example because you are not a public sector body under RPSI, then you should deal with charging for re-use according to the dataset provisions in the Act. If datasets are made available for re-use under the Open Government Licence there is no re-use fee.

The General Data Protection Regulation (the GDPR) and the Data Protection Act 2018 (the DPA 2018) give rules for handling information about people. They include the right for people to access their personal data. The Freedom of Information Act and the DPA 2018 come under the heading of information rights and are regulated by the ICO.

When a person makes a request for their own information, this is a data protection subject access request. However, members of the public often wrongly think it is the Freedom of Information Act that gives them the right to their personal information, so you may need to clarify things when responding to such a request.

The GDPR and the DPA 2018 exist to protect people's right to privacy, whereas the Freedom of Information Act is about getting rid of unnecessary secrecy. These two aims are not necessarily incompatible but there can be a tension between them, and applying them sometimes requires careful judgement.

When someone makes a request for information that includes someone else's personal data, you will need to carefully balance the case for transparency and openness under the Freedom of Information Act against the data subject's right to privacy under the data protection legislation. You will need to decide whether you can release the information without infringing the GDPR data protection principles.

Copyright and intellectual property

The Act does not affect copyright and intellectual property rights that give owners the right to protect their original work against commercial exploitation by others. If someone wishes to re-use public sector information for commercial purposes, they should make an application under the Re-use of Public Sector Information Regulations. The ICO does not have any powers to regulate copyright or the re-use of information.

When giving access to information under the Act, you cannot place any conditions or restrictions on that access. For example, you cannot require the requester to sign any agreement before they are given access to the information. However, you can include a copyright notice with the information you disclose. You can also make a claim in the courts if the requester or someone else uses the information in breach of copyright. The ICO encourages public authorities to use the Open Government Licence provided by the National Archives.

In most cases re-use of information released under the Act is dealt with under RPSI. RPSI applies to most but not all public authorities; for example, universities in general are not covered by RPSI although their libraries are. For public authorities that are not subject to RPSI, there are some re-use provisions in the Act but they only apply to one type of information, namely datasets. Under these provisions, if you are releasing a dataset that is a 'relevant copyright work' and you are the only owner of the copyright or database rights, then you must release it under a licence that permits re-use. The licences to use for this are specified in the section 45 code of practice on datasets. If the dataset can be re-used without charge, then the appropriate licence will usually be the Open Government Licence.

Other laws to consider

The Freedom of Information Act may work alongside other laws.

Some of the exemptions in the Act that allow public authorities to withhold information use principles from common law, for example the section 41 exemption refers to the law of confidence.

Also, section 44 of the Act allows information to be withheld when its disclosure is prohibited under other legislation, and section 21 can exempt information that is accessible to an applicant using procedures in other legislation.

When dealing with requests for information, you should continue to be aware of your obligations under the Equality Act 2010 (or Disability Discrimination Act 1995 in Northern Ireland). These Acts are not regulated by the ICO so they are not covered in this guidance.

You should handle requests for environmental information under the Environmental Information Regulations 2004. The Regulations also require you to make environmental information available proactively by readily accessible electronic means. If you are likely to be handling requests for information, you will need to familiarise yourself with the basics of the Regulations, especially the definition of 'environmental information', found in regulation 2(1).

If you are a public sector body as defined by RPSI then most of the information you hold as part of your public task must be made available for re-use on request. Most, but not all public authorities are public sector bodies under RPSI. Libraries, museums and archives are covered but they have discretion as to whether to permit re-use. RPSI applies to information in which you, as the public sector body, hold the intellectual property rights but does not generally apply to information that is exempt from disclosure under the Act or under the Environmental Information Regulations.

The Infrastructure for Spatial Information in the European Community Regulations 2009 came into force on 31 December 2009. You will need to take these into account when considering your duty under the Freedom of Information Act to proactively publish information, as they require public authorities to make 'spatial data sets' (sets of data linked to geographical locations) publicly available in a consistent and usable electronic format.

If the requestor is unhappy with the outcome of the request

Under the Act, there is no obligation for an authority to provide a complaints process. However, it is good practice (under the section 45 code of practice) and most public authorities choose to do so.

If you do have a complaints procedure, also known as an internal review, you should:

- ensure the procedure is triggered whenever a requester expresses dissatisfaction with the outcome;
- make sure it is a straightforward, single-stage process;
- make a fresh decision based on all the available evidence that is relevant to the date of the request, not just a review of the first decision;
- ensure the review is done by someone who did not deal with the request, where possible, and preferably by a more senior member of staff; and
- ensure the review takes no longer than 20 working days in most cases, or 40 in exceptional circumstances.

When issuing a refusal notice, you should state whether you have an internal review procedure and how to access it. If a requester complains even when you have not refused a request, you should carry out an internal review if they:

- disagree with your interpretation of their request;

- believe you hold more information than you have disclosed; or
- are still waiting for a response and are unhappy with the delay.

Even if your internal review upholds your original decision (that, as at the date of the request, the information was exempt from disclosure) you may wish to release further information if circumstances have changed and your original concerns about disclosure no longer apply. You are not obliged to do this but it may resolve matters for the requester and reduce the likelihood of them making a complaint to the Information Commissioner if you do.

the Information Commissioner's Office: · Report a concern online at https://ico.org.uk/concerns/

· Call 0303 123 1113

· Or write to: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF