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Vexatious and repeated requests	35
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Official sources	37
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5ddYbX]l '6. 'i ~~~]ghcZ'Yl Ya dh]cbg'	' -
Absolute exemptions	39
Qualified exemptions	39

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Three months after the Freedom of Information Act¹ (FoI Act) was passed by Parliament, The Constitution Unit published the first edition of *A Practical Guide to the Freedom of Information Act 2000*. Now, three months before the right to individual access (“right to know”) goes into effect, the Unit has produced a revised edition which is as succinct and easy to use as the original but contains updated material, including case studies and references to recently published, more detailed official advice.

This guide serves as an introduction to implementation and operation of the FoI Act, focusing specifically on its core principles and features, how public authorities should prepare for implementation and what FoI



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The FoI Act implements one of several policies designed to modernise government and to ensure that decision-making by public officials is open and transparent. The Act should also have an impact upon the way public authorities manage their information and records as well as the way they handle requests for information following implementation in January 2005.

There are a number of reasons the FoI Act is important and demands special attention and training. It will become the central vehicle for policies, processes, and training about openness for the following main reasons:

- The overarching principle is that all information held by an authority is accessible, unless one of the exemptions in the FoI Act applies.
- The Act applies to all written requests for information, whether or not the Act is mentioned by the applicant.
- Over time, the Act is likely to attract greater public awareness of the opportunities and rights of access to information than does the current patchwork of legislation, regulations and policies. This is likely to lead to more requests for information, including some that are contentious.
- In this "Age of the Internet", and with the implementation of various e-government initiatives, it is expected that information will be published more regularly than before and made available electronically on a more frequent basis. This will, in turn, fuel an increase in the public's expectations for readily available information.

The Act provides new opportunities for public authorities to engage more fully with their stakeholders and to routinely publish the information they need and want, thereby enhancing their reputation for openness and trustworthiness. However, there are also risks to reputation and to budgets. First, an authority's performance when publishing information and responding to requests will be easy to compare with that of others. Second, if the state of the records does not allow information to be readily found, the costs of finding that information will be borne by the authority. Finally, if information is refused without justification, the authority will incur additionê i ün=nõ m

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Freedom of Information Act 2000

Introduction

The FoI Act constitutes a framework within which all requests for information can be considered. The following aspects of the Act support this view:

- All written requests are FoI Act requests (section 8).
- If other legislation or an EU regulation prohibits the provision of information, that prohibition is upheld by the Act (section 44).
- If other legislation requires information to be provided, that legislation is upheld by the Act (section 78).
- If other legislation or an EU regulation provides discretion not to disclose information, that discretion must be exercised according to the terms of the FoI Act. This will often be subject to the public interest test (section 2).

Authorities also need to consider access rights under the following legislation:

- The Data Protection Act 1998 (DP Act), which addresses requests for personal data;
- The Environmental Information Regulations 1992 (EIRs), amended in 1998, which pertain to requests for environmental information (Note: Revised EIRs will also be in force from January 2005);

Various other subject-specific legislation that applies to, for example:

Section 40 of the FoI Act states that if someone requests information about himself/herself, this automatically becomes a “subject access request” under the DP Act. If someone requests information about another person, this request must be decided under the FoI Act in accordance with DP Act principles. In practice, this means that information should be disclosed unless deemed illegal or unfair to the data subject, or if an exemption in the DP Act would have applied had the request been made by the data subject.

Section 10 of the DP Act allows data subjects to issue notices to data controllers requesting that they cease processing their personal data or forbidding disclosure of personal information to a third party. One of the effects of section 40 of the FoI Act is that the public interest test must be applied before complying with such notices. The expected outpli

Commissioner: The Commissioner's general advice is that, given the similarity between the two pieces of legislation, it is best to adopt a unified approach to the FoI Act and the B a

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Request must be in writing.	Request need not be in writing.
Exemption where cost of compliance exceeds the "appropriate limit" as defined in the Fees Regulations.	No equivalent exemption. However, "reasonable" charges can be made.
Information held on behalf of another person is not included.	All information which is held is included, whether or not it is held on behalf of another person.
Some exemptions are not subject to the public interest test.	All exemptions are subject to the public interest test.
Information which would prejudice commercial interests can be withheld if the public interest in withholding it is greater than the public interest in release.	Where a request relates to information on emissions into the environment, it cannot normally be refused.



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- Description of the information requested

Under normal circumstances, public authorities have to respond to requests within 20 working days. If an exemption applies and the authority has to consider the balance of the public interest before deciding whether or not to release the information, a “reasonable” time within which to respond fully is allowed. However, the authority must let the applicant know within the 20 day period that an exemption applies and give an estimate of the date by which a decision will be made. More information about the response time allotted to authorities can be found in the ICO’s Awareness Guidance Number 11.

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Public authorities must provide advice and assistance to those who have requested information or who propose to do so. This should be an important element of an authority’s plan to engage more positively with the public in the context of the FoI Act. Guidance on complying with this duty is included in the Access Code (II, 5-15). If an authority has conformed to this code in providing advice and assistance, it will have complied with its legal duty as set out in section 16 of the Act.

The code requires the publication of procedures for dealing with requests. It specifies that public authorities help applicants frame requests and clearly describe the information they are requesting. It explains that appropriate assistance can include an outline of the different kinds of information that might meet the terms of the request as well as detailed catalogues and indexes if available.

If the disclosure of information is refused on cost grounds, the authority should indicate which information could be provided within the cost ceiling. (Note: Under the EIRs there is no provision for refusal on cost grounds.)

Advice and assistance may be an onerous obligation for some authorities. In order to meet it effectively, staff need to Q s t r some a± Q n’ R n’ t s Q

When notifying an applicant of a refusal to supply information for any reason, the authority must give the applicant details of the complaints procedure. It must also provide information about the right to appeal to the Information Commissioner for a decision under section 50 of the Act.

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There are 23 exemptions listed in Part II of the Act. Other conditions under which information may be withheld also exist. For example, if a request is considered vexatious or if the cost of finding and retrieving the information is above the “appropriate limit” as set out in the Fees Regulations, the authority may refuse to release the requested information.

There are two types of exemptions: “Absolute” and “Qualified”. A complete schedule of all the exemptions is provided in Appendix B. Those expected to be used most often are described below.

Public Interest Test

If a qualified exemption applies to a request, the authority will have to release the information unless the balance of the public interest supports the maintenance of the exemption.

The public interest test in section 2 of the FoI Act provides that the authority must release the information unless, 'in all the circumstances of the case, the public interest in maintaining the exemption outweighs



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Freedom of Information Act 2000

Information Commissioner

The Information Commissioner is an independent officer who reports directly to Parliament. He plays the central role in ensuring compliance with the Act and giving the public information about the Act. His duties include:

- Promoting the observance of good practice by public authorities, requirements of the Act and provisions of the codes of practice;
- Providing information to the public about the Act;
- Considering complaints from applicants;
- Reporting annually to Parliament on the exercise of his functions under the Act.

His powers under the Act include:

- Serving a decision notice on an authority which, in his estimation, has failed to comply with the Act in a number of specified ways, including failure to communicate information as required by the Act. A decision notice must specify the steps which the authority must take to comply. This could include the release of information an authority had decided to withhold;
- Serving an information notice requiring a public authority to provide him with specific information;
- Serving an enforcement notice if he is satisfied that a public authority has failed to comply with any of the requirements of Part 1 of the Act;
- Approving and revoking his

dismiss an appeal or to substitute a notice that could have been served by the Information Commissioner. There is a further right of appeal from the Tribunal to the High Court but this can only be made on points of law.

In conclusion, there are four tiers of appeal for dissatisfied applicants:

- The authority's internal complaints;
- The Information Commissioner;
- The Information Tribunal;
- The High Court (on a point of law).

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An organisation's effectiveness in complying with and gaining benefit from the Act depends heavily upon senior management's commitment and ongoing involvement with FoI request response procedures. There

An essential element of the correct handling of requests for information is understanding what stakeholders need, want, and are likely to request. This information will change over time and there may be sudden unpredicted demands. However, the ability to prepare, either by enhancing the publication scheme or by

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All the authority's staff who will handle requests from the public need guidance and training. Those who will receive the more complex requests (the central FoI resource, in particular) require more detailed guidance and training. However, awareness training should be given to all members of staff, especially senior officers and managers who need to have a reasonable level of awareness of the FoI Act in order to understand its implications and importance.

Training plans for staff and management should be considered in light of the fact that the Act is intended to bring about a substantial change of culture within public authorities and to achieve a much more positive attitude towards release of information to the public. Authorities can take advantage of the need for training to ensure compliance, to promote their policies, to engage more fully with the public and to further this culture change.

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The Information Commissioner has a duty to promote the Act to the public. The Act applies to a very wide range of public authorities. Therefore, it is reasonable to expect that the public, press, business and campaigning groups will become familiar with its features and how to use it.

An authority may find it worthwhile to take an active role with its stakeholders to explain its policy and practice with regard to openness and to promote how they may most easily approach the authority for information. This could be a key element in a wider policy to engage more fully with stakeholders.

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One of the biggest sources of help to FoI practitioners, especially in the first few months after implementation, will be other practitioners. Using networks to discuss cases, obtain and give advice and exchange information will improve authorities' effectiveness and efficiency in handling FoI requests. The DCA discusses the use of networks in more detail in its Model Action Plan¹¹, offers assistance in setting up national networks and encourages the establishment of local networks.

¹¹ <http://www.foi.gov.uk/map/modactplan.htm#part7>



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The Act specifies the essential requirements relating to the handling of a request. These include:

- The request must be in writing and include sufficient contact information so that the authority can reply. Note that requests made under the EIRs do not need to be in writing. However, it would be good practice to seek written confirmation of each request in order to ensure that there is no misunderstanding;
- The timescale for response is normally 20 working days;
- When the applicant expresses a preference for the information to be communicated in one of a number of forms described in the Act, the authority is required to comply 'so far as is reasonably practicable' (section 11);
- A duty to provide advice and assistance (section 16).

The process chart on the following page illustrates the 10 main processes which are required to handle a normal range of requests from receipt to release of the information or refusal to disclose. It is assumed that related processes are available to handle subject access requests under the DP Act and those areas where there are differences between the FoI Act and the EIRs.

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Requests for information can be sent to any part of the organisation. Most authorities already encourage the public to approach a central help or information point when they are seeking information. The vast majority of requests will reflect the normal business of the authority. These are easily satisfied and there is no need to add any additional process or bureaucracy to handle these simple requests. Examples are requests for leaflets, or guidance on which department to approach.

People dealing with requests for information need to be trained to distinguish between different types of requests. They should be able to recognise the kind of FoI Act requests which should be directed to the FoI resource, which to the authority's FoI Act publication scheme and which to the advice and assistance unit. This training should also include how to recognise requests for environmental information that should be transferred to the FoI resource.

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All requests received by the FoI resource should be logged and recorded from receipt to completion. The initial tasks are to validate the request, direct it to advice and assistance or the DP Act or EIR process, and

conclusion. At this stage it might become clear that a public interest test will be required and that more than 20 days will be needed to complete it. If so, a notice should be given to the applicant with an estimate of the planned timescale for a decision on release. In addition, depending on the authority's policy and whether a significant fee is likely to be required, the fee can be charged to the applicant and collected before any substantial effort is undertaken.

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The information should be collected from wherever it is held within the organisation. In some cases, this will involve photocopying documents but increasingly it will involve accessing information held in electronic form

When consultations are required they need to be handled to short and planned timescales. These can be of two types:

- Internal, where the officers who best understand the issues are consulted, e.g. procurement officers in relation to contract information or finance officers in relation to accounting information. The purpose is to understand whether one or more of the exemptions might apply as well as the nature of any likely "prejudice";
- External, where third party suppliers of information, or people and organisations who might be affected by release of the information, are asked whether they believe they 'would mind' 'would



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There will be categories of information that make up a large percentage of requests and topics faced by authorities that require more time and effort to satisfy than others. One main area that will see a high volume of requests is personal information. This is explained in detail in The Constitution Unit's *Practical Guide to the Data Protection Act* by John Wouds. Other areas of high numbers of request and potential difficulties in responding are described below.

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Requests for commercial information may be contentious and large in number. In many countries, requests for information of commercial value have been the largest or second largest category in terms of volume. Examples include requests for information about:

- Public contracts and their performance;
- Public grants;
- Licences granted, the conditions which apply and any periodic reports provided;
- Details of submissions made in consultation exercises;
- Regulatory activity.

While a number of possible exemptions could apply to this information, the exemptions most likely to apply are:

- Information provided in confidence (section 41—see p 17)
- Commercial interests (trade secrets and prejudice to commercial interests) (section 43—see p 18)

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Department of Constitutional Affairs—<http://www.foi.gov.uk>

Information Commissioner—<http://www.informationcommissioner.gov.uk>

The National Archives—<http://www.nationalarchives.gov.uk/policy/foi>

Department for Environment Food and and Rural Affairs (DEFRA)—<http://www.defra.gov.uk>

The Audit Commission—<http://www.audit-commission.gov.uk>

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Constitution Unit (FoI/DP team)—<http://www.ucl.ac.uk/constitution-unit/foidp>

Campaign for the Freedom of Information—<http://www.cfoi.org.uk>

The Guardian: Special Report, Freedom of Information: <http://www.guardian.co.uk/freedom>

Joint Information Systems Committee (JISC)—<http://www.jisc.ac.uk>

UK Freedom of Information Act Blog—<http://foia.blogspot.com>





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Ms. G recently applied for a job as an executive officer in your authority's human resources department. She was turned down in favour of a male applicant three years her junior who is of Chinese descent. Ms. G has telephoned the authority and been transferred to you, the FOI officer. She asks for the following information:

1. The reasons why she was not given the job. She says that she is requesting this information under the Data Protection Act 1998.
2. The original hand-written notes made by the interview panel.
3. Any internal guidance on "targets" which may have been set for appointment of candidates from ethnic minorities as well as the gender, age, sexual orientation and ethnicity of the other candidates.
4. A reference given to the department by Ms. G's school.

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These requests cannot be dealt with over the telephone. It would be reasonable to explain that for these requests to be considered under the DP Act and the FOI Act, they should be submitted in writing. If she finds this problematic, she should

also wants notes about the other applicants, that part of the request must be considered under the FoI Act but in accordance with DP Act principles.

- *Internal guidance on targets*

This information would normally be releasable, unless there is a particular reason, supported by an FoI exemption, why they should not be released.

- *Reference from her school*

This is also a subject access request under the DP Act. If the school submitted it on a confidential basis, legal advice will be needed.

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Issues and questions of this type are best addressed by advance preparation, for example, making clear to all candidates and the interview panel exactly who will be told what and what will be confidential. Steps should be taken to ensure that candidates understand the position and, if they wish, receive a debriefing in line with what they have been told.

All internal guidance should be reviewed with a view to publication or made available in response to requests unless there are good reasons, supported by FoI exemptions, not to do so. When references are requested it should be made clear the status they will have, normally releasable to the subject, unless for particular reasons, agreed in advance, which are supported by the DP Act.

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You are a central FoI officer in the Immigration Directorate (ID) which is responsible for all immigration matters within the Home Office. ID recently published the response to the public consultation on the reform of the British Asylum Council (BAC). Concern for Immigrants (CI), a pressure group, disagrees with the Home Office's proposals for reform. It considers that its own response to the consultation was not given proper consideration by Home Office officials. CI has requested "the information the Home Office holds about local asylum committees relating to the consultation." The Home Office holds a huge range of information "about local asylum committees" on hundreds of files going back several years.

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The first action to take is to offer to advise and assist CI to clarify their request. Due to the volume of information they have initially requested, the amount of work (and thus the cost) would probably be above the 'appropriate limit' and therefore exempt for this reason. However, the authority may have a policy to supply above this limit but charge the full cost to the applicant. The fees regulations will clarify this position. If CI want to continue on this basis, fees should be estimated, agreed by the applicant and could be charged in advance. Otherwise, CI should be advised to pare down their request to something that is within the 'appropriate limit'.

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If the revised request covers this information, the exemptions most likely to apply are section 35, Formulation of Government Policy, and section 42, Legal Professional Privilege. However, both exemptions are subject to the public interest test so this will need to be applied before reaching a decision.

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Probably not, but consultation with the SIA would be appropriate before you do. The decision, though, would rest with you in the end.

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This part of the request could be considered under the exemption set out in section 22 which would allow the authority to withhold the information for the time being because it is scheduled for future release. You do not have to specify the date by which you will publish it, but the exemption requires that it should be 'reasonable in all the circumstances' to withhold it in this way, so you should not simply use this as a stalling tactic.

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This case makes clear that the questions have only been asked because CI felt that its response had not been given proper consideration. While not in any way delaying the normal process of handling, it may be sensible to review whether addressing the real issue that they have expressed may produce a good

solution. In situations of this type it will often be in the interests of the department and of the applicant to address the underlying issue. An approach of this type could lead to a much smaller quantity of relevant information being provided and enhance the relationship with the pressure group.



to claim which, if any, elements should be kept confidential for how long and the reasons why. This can be negotiated long before FoI requests arrive. Possibly some of the information could be published in the publication scheme.



