



DATA PROTECTION: FREEDOM OF INFORMATION ACT

The Freedom of Information Act 2000 ('The Act') was passed November 2000. The Information Commissioner's Office (ICO), a new post that came into force January 2001, and combines Freedom of Information and Data Protection, which enforce the Act.

What does the Act do?

The Freedom of Information Act 2000 provides public access to information held by public authorities.

It does this in two ways:

- ☛ public authorities are obliged to publish certain information about their activities; and
- ☛ members of the public are entitled to request information from public authorities.

The Act covers any recorded information that is held by a public authority in England, Wales and Northern Ireland, and by UK-wide public authorities based in Scotland. Information held by Scottish public authorities is covered by Scotland's own Freedom of Information (Scotland) Act 2002.

The main principle behind freedom of information legislation is that people have a right to know about the activities of public authorities, unless there is a good reason for them not to. This is sometimes described as a presumption or assumption in favour of disclosure. The Act is also sometimes described as purpose and applicant blind.

This means that:

- ☛ everybody has a right to access official information. Disclosure of information should be the default – in other words, information should be kept private only when there is a good reason and it is permitted by the Act;
- ☛ an applicant (requester) does not need to give you a reason for wanting the information. On the contrary, you must justify refusing them information;
- ☛ you must treat all requests for information equally, except under some circumstances relating to vexatious requests and personal data. The information someone can get under the Act should not be affected by who they are. You should treat all requesters equally, whether they are journalists, local residents, public authority employees, or foreign researchers; and
- ☛ because you should treat all requesters equally, you should only disclose information under the Act if you would disclose it to anyone else who asked. In other words, you should consider any information you release under the Act as if it were being released to the world at large.

This does not prevent you voluntarily giving information to certain people outside the provisions of the Act.

Who does the Act cover?

Public authorities include government departments, local authorities, the NHS, state schools and police forces. However, the Act does not necessarily cover every organisation that receives public money. For example, it does not cover some charities that receive grants and certain private sector organisations that perform public functions.

Recorded information includes printed documents, computer files, letters, emails, photographs, and sound or video recordings.

What rights do individuals have?

The Act does not give people access to their own personal data (information about themselves) such as their health records or credit reference file. If a member of the public wants to see information that a public authority holds about them, they should make a subject access request under the Data Protection Act 1998.

Anyone will be able to make a request for information, although the request must be in permanent form. The Act gives applicants two related rights:

- ☞ The right to be told whether the information exists,
- ☞ The right to receive the information (and where possible, in the manner requested, i.e. as a copy or summary, or the applicant may ask to inspect a record).

Applicants will be able to exercise their right of access to the information held. They will then be able to ask for information recorded both before and after the Act was passed.

The Data Protection Act 1998

Gives rules for handling information about people; it includes the right for people to access their personal data. The Freedom of Information Act and the Data Protection Act 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 subject access request under the Data Protection Act. 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 Data Protection Act exists 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 Act in deciding whether you can release the information without breaching the data protection principles.

Exemptions due to other Acts:

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) and the Welsh Language Act 1993. 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.

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.

Responding to requests:

Anyone has a right to request information from a public authority. You have two separate duties when responding to these requests:

- ☞ to tell the applicant whether you hold any information falling within the scope of their request; and
- ☞ to provide that information.
- ☞ You normally have 20 working days to respond to a request.

For a request to be valid under the Freedom of Information Act it must be in writing, but requesters do not have to mention the Act or direct their request to a designated member of staff. You cannot ignore or refuse a request simply because it is addressed to a different member of staff. Any letter or email to a public authority asking for information is a request for recorded information under the Act.

This doesn't mean you have to treat every enquiry formally as a request under the Act. The provisions of the Act need to come into force only if:

- ☞ you cannot provide the requested information straight away; or
- ☞ the requester makes it clear they expect a response under the Act.

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 a public authority does not receive payment within three months of issuing a fees notice, it is no longer obliged to respond to the request. The public authority should tell the requestor about the deadline in its fees notice.

In cases where information is covered by an exemption, but the authority is then required to consider the public interest in releasing it, the authority must provide the information within a reasonable time.

The above information has been extracted from the Data Protection and ICO websites and further information is available from:

Information Commissioner, Wycliffe House, Water Lane, Wilmslow, Cheshire. SK9 5AF

Helpline: 0303 123 1113 (local rate) or 01625 545 745 (National rate number)

E-mail: casework@ico.org.uk (add your contact telephone number)

Fax: 01625 524 510

Website: www.ico.gov.uk

(updated September 2014)

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