

Freedom of Information (Fol) Guidance For Casework

Freedom of Information and subject access – a guide for casework

Information team

All aspects of Freedom of Information compliance at IPCC are the responsibility of the information team. This is part of the Casework and Customer Services Directorate based at High Holborn and currently consists of four persons:

- Dijinder Chowhan – Freedom of Information Team Leader
- Philip Johnston – Freedom of Information Officer
- Vangie Parker-Lacsamana – Freedom of Information Officer
- Athena Cass – Freedom of Information Administrative Officer

The responsibilities of the team also include subject access requests to IPCC under section 7 of the Data Protection Act 1998. Please note, however, that requests by IPCC personnel for information held by our HR department should normally be made direct to HR.

New requests or requests for advice can be sent by email to foi .

Freedom of information and casework related requests

Casework related requests should not be referred to the Freedom of Information team unless they expressly refer to the Freedom of Information Act or the Data Protection Act. It is accepted, however, that there will be exceptions to this rule and Case Managers should not hesitate to seek advice from the FOI team when they receive request from complainants or others for information contained in our files.

Requests from the media that do not mention FOI should be referred to the relevant Regional Communications Officer. Otherwise, case related requests from persons who are not involved in the case should be passed to the FOI team for consideration.

Some general rules can be used as a starting point:

Type of request about IPCC case	Owner	CWM involvement
Media request	Regional Communications Officer	None (refer to RCO)
Request by complainant or interested person – FOI/DPA referred to in request	Freedom of Information Officer	None (refer to FOI)
Request by complainant or interested person – FOI/DPA NOT referred to in request	CWM	CWM progresses in accordance with s.20/21 PRA duty
Any request by someone not involved in the case	Information Rights Officer	None (refer to FOI)

Frequently asked questions

1. How does a Freedom of Information request differ from a request that should be dealt with under the Police Reform Act?

A request under the Freedom of Information Act will be valid when it is made in writing, describes the information subject of the request and gives a name and address for correspondence. The Act is 'applicant blind', meaning that the identity of the person making the request is irrelevant to the right of access so that a request from 'MickeyMouse@hotmail' may be valid for the purposes of the Act.

Any request for information made in writing to the IPCC could be a request that engages the general right of access under the Freedom of Information Act. A public authority is required to give effect to the Act when dealing with requests from the public and in some circumstances can be criticised by the Information Commissioner for not doing so, even though the applicant did not mention the Act when making the request.

Whereas disclosure under the Freedom of Information Act is 'applicant blind', so that the information is automatically available to any member of the public, the PRA information duty is owed only to persons with the status of a 'complainant' or 'interested person' as defined in the 2002 Act.

Complainants who enquire about their FOI rights to see their own case should be advised that the general right of access takes no account of any connection between the applicant and the information being requested. The complainant's legitimate interest in being informed about his own case will be entirely irrelevant to the question whether the information should be disclosed to him under the Act, so his position as a FOI applicant will be no different to that of any other member of the public seeking the same information.

Therefore, the primary means by which complainants and interested persons can access information about their own cases remains the information duty under sections 20 and 21 of the Police Reform Act because, unlike any other information right, it was introduced with the specific purpose of ensuring that persons with this status are properly informed about the findings and outcomes of investigations under the Act.

2. Which casework related requests should I pass to the Freedom of Information team?

Some requests must always be passed to the Freedom of Information team for consideration, for example:

- the applicant expressly states that the request is being made under an information right other than PRA (even if the PRA information duty would appear to be more appropriate); or
- the applicant is not involved in the case.

If in doubt, please ask.

3. Which casework related requests should normally be answered by casework?

Where the request does not mention FOI, it can be dealt with by casework when:

- It has clearly been made in the PRA context; or
- The information can be supplied by casework and information rights other than PRA need not be considered.

If the request is from a person involved in the case, the general rule is that it should be answered by the Casework Manager. This applies to open and closed cases and cases where there has been no investigation. If these requests were dealt with under FOIA the connection between the applicant and the case would be disregarded and the applicant would be denied the personal service he would rightly expect in recognition of his involvement in the case. For example, the parents of someone who has died or been seriously injured in connection with police conduct would not expect to be treated like any other member of the public when asking for information about their case.

This is not to say, however, that requests from persons involved in our cases that do not specify FOI will never be dealt with under the Act. This is because, in principle, any request to the IPCC for information is potentially a request that engages the Act. It may sometimes be appropriate to deal with a request from complainant under FOIA when the Act is not mentioned in the request. For example, if a complainant continually demands information that we have refused under the PRA harm test, we may decide that the best way to give effect to our commitment to openness is to reconsider the matter under the FOIA. If, then, the applicant is dissatisfied with our response, he can request a review by the Information Commissioner and then the Information Tribunal.

It is not true to say that requests concerning closed cases should always be considered under the FOIA. If, for example, a complainant has been denied information under the PRA 'harm test' on the sole ground that the case is proceedings related, the information should not be withheld after the proceedings have concluded unless a new ground has emerged in the mean time.

Each request must be dealt with on its own merits and Case Managers should not hesitate to contact the Freedom of Information team for advice.

4. When is 'ownership' relevant?

The concept of ownership (whatever that may mean!) is irrelevant to information rights.

The Codes of Practice to the FOIA recognise that when information is requested from one party that has been supplied to it by another, the party receiving the request should normally consult with the originating party before making its decision. The receiving party must deal with the request if it holds the information. The IPCC and ACPO have developed a working practice agreement that sets out the steps that should be taken in these circumstances.

Under the Police Reform Act, it is the duty of the investigating authority (either the Force or the IPCC, depending on the investigation mode) to keep a complainant or interested person informed about the progress, findings and outcomes of the case. The duty rests with the investigating authority because it will be in possession of all the relevant facts about the investigation and so will be best placed to decide whether the harm test should be applied. Consistent with this duty, the IPCC should be guided by the Investigating Officer as to what information it could disclose when it receives a request from a complainant regarding a closed local or supervised investigation, or in respect of documents relating to a dispensation or similar application. Accordingly, it will usually be sensible to refer the request to the police Investigating Officer who can then contact the complainant direct. Advice can always be sought from the FOI team.

5. How does our protective marking system affect information rights?

Under the IPCC protective marking system, information is marked according to the harm that would result from its unauthorised disclosure and it is then protected by the appropriate marking to avoid this harm.

The Freedom of Information Act does not refer to the protective marking scheme because the fact that a document has a protective marking does not, in itself, mean that information cannot be disclosed.

A protective marking may indicate that an exemption is likely to apply and should at least be considered, but it does not automatically mean that the information is exempt from disclosure under the FOI Act.

FAQ – Data Protection Act – The right of subject access

1. What is a subject access request?

In contrast to the Freedom of Information Act, a person's right of subject access under section 7 of the Data Protection Act is entirely dependent upon their status as the 'subject' of the data they would like to see. Any person can make an application to the IPCC to be informed whether 'the data controller' is processing 'personal data' of which the applicant is the subject, and, if so, to be provided with a copy of these data and an explanation of the purposes for which the data are being processed.

Subject access requests are dealt with by the Freedom of Information team.

Any request for 'the personal information you hold about me' or similar wording should be dealt with as a subject access request. A request for 'all the information you hold about my complaint case' would not normally be dealt with under section 7, unless the applicant mentions 'data protection' or similar. This is because the definition of personal data does not necessarily encompass data connected with a complaint (see below).

Subject access requests in respect of casework files are dealt with by the Freedom of Information team.

2. What is personal data?

'Personal data' are defined as personal information that 'relate to' an identifiable living individual. In order to 'relate to' someone, the data must say something significant about them. It follows that not all information that relate to an individual will also be his personal data; it is not the case, for example, that all information generated in the course of a complaint enquiry will amount to the personal data of the complainant – the material may relate to his complaint but it does not necessarily relate to him personally (see *Durant v Financial Services Authority* [2003] EWCA Civ. 1746).

Anyone making a request to see their personal data should specify the personal data that they would like to see in as much detail as possible – a request by a complainant for 'all the personal data you hold about me' is unlikely to be a valid request and will not be processed without clarification from the applicant.

3. What will a complainant be allowed to see?

Police complainants can be informed that section 7 does not amount to a right of access to documents contained in police complaint files, but only to the applicant's own personal data contained within those files or documents, subject to some important limitations. Following *Durant*, it can be argued that the contents of a complaint file are the personal data of the person or persons complained against rather than the complainant, so in general complainants should not be encouraged to make subject access requests for personal data in their cases, unless they are seeking some very specific information.

Under the right of subject access an applicant is not automatically entitled to see his own personal data when some other person is identified by it – an exception which is often relevant to requests for investigation related personal data. The Act also contains certain exemptions from the right of subject access, including an exemption for information likely to prejudice the prevention or detection of crime.