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FOI POLICY INTERNAL KNOWLEDGE BASE			
FoI or EIR	Section/Regulation	Issue	
FOI	s19, s21	Investigating section 19 and 21(3) complaints	
Summary:			
<p>Complaints that section 21(3) has been incorrectly cited as a basis for refusing to provide information inevitably raise section 19 compliance issues that require investigation. The Commissioner's position is that where a public authority publishes information in accordance with its publication scheme it will be exempt by virtue of section 21(3) by default. Therefore case officers should investigate section 19 first and reach a decision about whether the public authority has complied with the model scheme and relevant definition document as this will inform the decision about section 21(3).</p>			
Further Information:			
<p>In circumstances where a complainant is claiming that requested information is not reasonably accessible by virtue of section 21 (3), issues of compliance with section 19 inevitably arise. The initial focus of the investigation should be on compliance with section 19.</p> <p>For example, a request may be made for information which is subject to payment of a fee and which the public authority claims is reasonably accessible to the applicant because it is made available in accordance with its publication scheme and so is exempt under section 21(3). The requester then says that the information is not reasonably accessible to him due to the high level of the fee.</p> <p>The Commissioner's position, as set out in the section 21 guidance, is that information published in accordance with the publication scheme (and any payment due determined in accordance with the scheme) is reasonably accessible to an applicant under section 21(3). If a public authority is found to have breached section 19 it also therefore follows that it is unlikely to be able to claim that the requested information is exempt under section 21(3). This is why section 19 should be considered first.</p> <p>As we expect all public authorities to have adopted the Commissioner's model scheme, the investigation should first seek to establish whether the public authority has in fact done this. If it has not, this would be a breach of section 19(1)(a). Similarly, if, for example, the public authority has adopted the model scheme but is not complying with the requirements for fees as set out in the scheme, this is likely to be breach of section 19(1)(b) as the public authority would not be publishing information in accordance with the scheme.</p> <p>The same procedure should be adopted for any other complaints that are received about the accessibility of information in a publication scheme. For example, a complainant may argue that information is not reasonably accessible because it is only available by inspection. Although the information may objectively be less accessible (by definition information available only via inspection is likely to be less accessible than if the information were copied and sent to the applicant), caseworkers should consider whether this means of publication is permitted in the model publication scheme. Note that the wording of the model publication scheme does recognise that in certain circumstances it is reasonable for information to be made available by inspection only.</p>			
Source of Casework Advice Note	Policy Delivery	Details	
Related Casework Advice Notes	LTT026		
Related Documents	Model publication scheme ICO guidance: Information reasonably accessible to the applicant (section 21)		
Contact: DC			
Date: 31/05/2013		Reference number: CWAN 012	

- Information Commissioner's Office intranet