
FREEDOM OF INFORMATION ACT 2000

General Induction



VERSION 1

2019



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Background

[The Freedom of Information Act 2000 \(FOIA\)](#) was introduced in January 2005 and gives any individual a right of access to any recorded information held by a Public Authority.

The FOI Act specifies that as a public authority we are obliged to respond to FOI requests. For individual requests we must comply with the following sections of the FOIA:

Section 1: Inform the applicant (in writing) if we **hold** the information falling within the scope of the request and communicate it to the requester.

Section 16: Provide **advice and assistance** to the requester.

Section 17: Should any information be **exempt**, specify the relevant exemption(s) engaged and state why the exemption is engaged.



Timescales – 20 working days

Section 10(1) of the Act states that the statutory deadline in which to respond to a request is 20 working days following the date of receipt (this excludes public and bank holidays). To ensure this deadline is met, we ask staff to return their DD cleared letter of response to the FOI Team by day 10.

Should you receive an FOI request directly from a member of the public, it is vital that you forward it to the FOI team to formally log and process. We need to ensure that you have enough time to handle and respond to a request within the statutory deadline.

Exceptions to the 20 day statutory deadline

Section 10(3) of the Act provides for a 'reasonable' extension to the 20 working day statutory timescale (up to a maximum of 40 days - as defined by the Information Commissioner) in particular circumstances. If a qualified exemption is engaged and you are still assessing the Public Interest Test (PIT) for and against disclosure you may be entitled to apply for a public interest extension. You can find further information relating to PIT arguments below at page 8.

Please note that the threshold for applying a PIT extension is extremely high. You can not extend for timeliness reasons, for example; you only considered the request on day 10 and do not have enough time to deal with it within the deadline.

If you are considering a PIT extension, you should contact the FOI team as soon as possible.



What is an FOI request? Is it valid?

A valid FOI request must:

- 1) Be submitted in writing, e.g. by letter, email, fax, twitter
- 2) Provide clear contact details, e.g. a name and return address
- 3) Ask for recorded information, such a copy of a report or emails created by officials
- 4) Be clearly communicated, enabling staff to easily identify whether the information requested is held by the department.

Please note - the requester does not need to cite the FOIA in order for the request to be a valid FOI request. Nor does citing the FOIA automatically make it a valid request.

Who can make a request?

Anyone, anywhere, can make a request for information under the FOI Act. No distinction is made between people from the UK or from any other country. The Act is also requester blind; this means we cannot take into account who the individual is or why they have requested particular information.

Dealing with a request

If you are allocated a request, the FOI Team will advise you of the 10 day internal deadline and also the final 20 day deadline for issue. On day 1 it is important that you read the request thoroughly, contact the FOI Manager immediately if you require clarification from the requester or feel that the request should be allocated to a different business area. Any delay could result in a missed deadline.

If the request is clear, assess all information held within scope. Decide if any information can be disclosed and draft a letter of response to either disclose information or to explain which exemptions are engaged. The FOIA exemptions are listed below at Part 7.



Once the response has been completed, obtain DD clearance and forward the cleared response to the [FOI mailbox](#) by day 10. If you created a Google document to draft the letter of response, ensure the final DD cleared version is also saved in CM9 in the appropriate folder.

The FOI Team will use the remaining 10 days to check content, obtain any further clearance if required, advise if any amendments are needed and then issue the response.

Freedom of Information Vs routine correspondence (Treat Official)

You should be aware of the distinct difference between an FOI request and general correspondence. The FOIA only concerns requests for **recorded information**.

An FOI request will ask for:

- Copies of papers considered when making a decision on a policy
- A copy of a specific report
- Data/ statistics, including financial figures.

Routine correspondence will seek:

- General advice or explanations on a specific policy
- Opinions on a particular decision

You may find the easy reference guide below useful in differentiating the two separate information access regimes:

Freedom of Information requests	Treat Official/Ministerial correspondence
Requesting <i>recorded</i> information	Anything else!
Request for data	Question about data
Concrete	Subjective
e.g. Could I have a copy of your policy on...?	e.g. What is your policy on...?
Deadline of 20 working days to log and respond	Deadline of 15 working days for Ministerial and Treat Official correspondence



Please remember – often you will find a request for information can contain a combination of FOI and treat official questions. You can make a judgement call to whether a separate response is required, but on all occasions you must ensure that the FOI request is referred to the FOI team.



Do you hold the requested information?

‘Held’ and ‘Recorded’ information

Under the Act, information is held if it is held by the authority or by another person on behalf of the authority. Section 84 of the Act refers to information ‘recorded in any form’ and gives right of access to recorded information held at the time the request is received.

Recorded in any form includes;

- Information held electronically (e.g. laptop, computer, and electronic records management system)
- Information recorded on paper (e.g. letter, memo, papers in a file)
- Sound and video recordings (CD, videotape)
- Hand-written notes or comments, including those written in pads or on Post-it notes.
- E-mails
- Information in storage

Conducting searches for information

When searching for information, you should consider whether it might be stored on personal/ shared drives or on the department’s EDRM CM9 system, Google Drives or Gmail. You should also consider whether the department holds a paper record on its on site, or off site, records stores.

Creating information

We are not required to create new information in order to answer a request. The FOIA enables access to information that already exists and is held on record. You should be clear of the distinction between creating new information and compiling it from different sources or

extracting it from a database (i.e. 're-presenting' information in a different form to what it is held).

Clarification

It is extremely important to ensure that it is clear from the request, what information is being requested. If the requester does not describe the information sufficiently for you to be clear about what they want, section 1(3) of the act allows for us to issue a clarification response.

Once the requester submits a response that contains sufficient detail to enable you to identify the information they are seeking, the 20 working day deadline will commence.

Information not held.

If the information is not held by the department you must state this in the response. If you are aware of an alternative public authority that may hold the information you should direct the requester to the appropriate authority, providing the appropriate contact details.

Section 12 refusal – Cost limit

Once you have confirmed if the information is held, or is likely to be held by the department, the next step is to assess whether the information can be located, retrieved and extracted within the appropriate cost limit.

Section 12 is a refusal under the Act. We can refuse to respond if it would exceed the cost limit to provide the information requested.

Cost limit

The cost limit is calculated at £600 or the equivalent of 3.5 days of work at £25 an hour in order to LOCATE, RETRIEVE and EXTRACT the requested information.

The following activities should be calculated towards the cost limit:

- Determine if we hold the information requested
- Locate the information or documents containing the information
- Retrieve the information or documents
- Extract the information from the document containing it.

The following activities cannot be taken into consideration when making a cost calculation:

- Reading time
- Time spent redacting information
- Time taken to consult with other departments
- Consideration of an exemption, or seeking legal advice

Section 12(1)

This applies to information that we know is held. However, to provide the information it would exceed the cost limit.

For example – If a request asks for copies of all financial invoices and receipts for the department covering the period 2008 – 2013, it would be likely to take longer than 3.5 working days for a member of staff to locate, retrieve and extract all the information held by the department.

Section 12(2)

This applies when it would exceed the cost limit for you to confirm if the requested information is held by the department.

For example – If a request asks for copies of any emails between staff that contain reference to breaking news stories, 2008 – 2013, every member of staff within the department would need to be contacted and all inboxes and EDRM searched to determine whether any information is held. This is likely to exceed the cost limit.

Discretionary information

Please remember that you can always provide information outside of the FOIA, on a discretionary basis to be helpful. If at any time, especially when the cost limit is engaged, you have information which is readily available, you should consider disclosing it. There is no obligation to do so, but the department should aim to be as helpful and as transparent as it can be.

Exemptions

The exemptions in Part II of the [Freedom of Information Act](#) are 'absolute' or 'qualified'.

Absolute: If an absolute exemption applies, there is no obligation under the Act to consider the request for information further.

Qualified: If the exemption is qualified, the public authority must weigh the public interest in maintaining the exemption against the public interest in disclosure. This is the public interest test.

An easy reference list of all the FOIA exemptions falling under Absolute or Qualified can be found below. This list is also available from the Freedom of Information (FOI) Guidance section of the intranet.

Section 21	AE	Information accessible to an applicant by other means
Section 22	QE	information intended for future publication
Section 23	AE	Information supplied by, or related to, bodies dealing with security matters
Section 24	QE	National Security
Section 26	QE	Defence
Section 27	QE	International relations
Section 28	QE	Relations within the UK
Section 29	QE	The economy
Section 30	QE	Investigations and proceedings conducted by public authorities
Section 31	QE	law enforcement
Section 32	AE	Court records
Section 33	QE	Audit functions
Section 34	AE	Parliamentary privilege



Section 35	QE	Formulation of government policy
Section 36	QE	Prejudice to the effective conduct of public affairs
Section 37	AE	Communications with Her Majesty, members of the Royal Family, the Royal Household and awarding of Honours
Section 38	QE	Health and safety
Section 39	QE	Environmental information
Section 40	AE	Personal information
Section 41	AE	Information provided in confidence
Section 42	QE	Legal professional privilege
Section 43	QE	Commercial interests
Section 44	AE	Prohibitions on disclosure

Public Interest Test

A public authority can only withhold information if the public interest in maintaining the exemption outweighs the public interest in disclosure.

The public interest here means the public good, not what is of interest to the public, and not the private interests of the requester.

In carrying out the public interest test you should consider the circumstances at the time of the request or within the normal life-cycle of a request. Public interest arguments for the exemption must relate specifically to that exemption.

You must consider the relative weight of the arguments for and against disclosure. This can be affected by the likelihood and severity of any prejudice; the age of the information; how far the requested information will help public understanding; and whether similar information is already in the public domain.

The public interest can cover a wide range of values and principles relating to the public good, or what is in the best interests of society. Some generic arguments you could offer for information falling in favour of disclosure could be:

- There is a public interest in transparency and accountability, to promote public understanding and to safeguard democratic processes.
- There is a public interest in good decision-making by public bodies, in upholding standards of integrity, in ensuring justice and fair treatment for all, in securing the best use of public resources and in ensuring fair commercial competition in a mixed economy.

However, these examples of the public interest do not in themselves automatically mean that information should be disclosed or withheld. For example, an informed and involved public helps to promote good decision making by public bodies, but those bodies may also need space and time in which to fully consider their policy options, to enable them to reach an impartial and appropriate decision, away from public interference. Revealing information about wrongdoing may help the course of justice, but investigations into wrongdoing may need



confidentiality to be effective. This suggests that in each case, the public interest test involves identifying the appropriate public interests and assessing the extent to which they are served by disclosure or by maintaining an exemption.

You will find further information on the public interest arguments specific to each exemption on the Information Commissioner's Office website under 'Exemptions': http://www.ico.org.uk/for_organisations/guidance_index/freedom_of_information_and_environmental_information

The FOI team will be on hand to assist should you need to consider a Public Interest Test.