

Outcome of cases

**This page is an interim update to slide 50
Introduction to FOI module and page 4 of
post-course reading booklet**

Updated 26 July 2018 from 2017/18 ICO Annual Report

NB The slide and booklet pie chart reflects figures for 2016/17.
These figures update those, and are colour-coded to match the pie
chart.

Total is not 100%, due to rounding.

In 2017/18 the ICO received 5705 FOI complaints – an increase of
5% on the previous year.

(New information not on slide) The number of complaints answered
was 5784 - an increase of 11.8% on the previous year.

Figures breakdown has remained largely similar each year. Last
year's figures are below, italicised in brackets.

DNs served = 25% of all case outcomes in 2017/18 (26%)

Informally resolved = 23% (25%)

Complaints made too early (eg no internal review) = 33% (30%)

Ineligible = 17% (16%)

Complaint not progressed = 2% (2%)

Viv Adams
20180726

What does the Freedom of Information Act do?

Provides **access to recorded information** held by public authorities:

- Obligation on authorities to publish certain information - **PROACTIVE**
- Right for public to request any information - **REACTIVE**

Does NOT:

- Provide access to your own personal data (the DPA does that)
- Require authorities to create / record information
- Give you the right to re-use or reproduce information covered by copyright *

* you may access copyright information by means of FOIA but that doesn't mean you have the right to re-use/reproduce it

Where does FOI come from?

Before 1997:	"Open Government" codes
1997:	FOI in Labour manifesto
2000:	FOIA passed in UK Parliament
2002:	FOI Scotland Act passed
2002 – 2004:	introduction of publication schemes (phased in)
2004	The EIR passed in UK Parliament

1 Jan 2005: requests for information under FOIA and the EIR

Who uses FOI?



Users of public services
People with a grievance
Researchers
People researching family history

Journalists
MPs
Campaign groups
Charities
Businesses



Introduction to FOI - training session

Checklist for Learning & Development (L&D) and for trainers

When the session has been scheduled - trainer

- Check whether invitations have been sent out by Learning and Development (L & D).
- Check L&D have booked the training room and asked Facilities to set up the equipment.
- Check L&D know to issue the pre-course instructions to delegates and their managers. This will include some pre- and post- course reading and an instruction to bring with them copies of FOIA and the EIR (their own, borrowed or printed off from legislation.gov.uk).

Before the session

- **Two weeks before the course**, L&D should please send out the pre-course instructions to each delegate and their manager by email. A simple covering email to them should have the following two handouts as attachments in Word.
 - ✓ Pre-course instructions for managers and delegates
 - ✓ Pre-course reading handout on FOIA

L&D will need to save and **send these as Word documents outside Meridio**. This is due to access restrictions on training documents, which means delegates would otherwise not be able to read them.

The originals are in Meridio folder 1.17.04.03.

- L&D please supply the training room on the day with pens, marker pens, post-it notes, name plates and "fiddle toys" (if trainer wants the latter – some trainees do find them helpful).
- Trainer please go through the slides and notes. The Meridio folder is 1.17.04.03 - Introduction to FOI. If you wish, insert your name and department on the "cover sheet" of the Powerpoint presentation. For your own copy, you will want to print all hidden slides, so do tick that box in the print options. **There is a hard copy of the full pack and copies of the DVD in a labelled folder in cupboard PD2 in Policy**

Delivery, first floor West Wing (behind the desks of Lisa Atkinson and Viv Adams).

- L&D please print off the handouts – NB do not print those which are crossed/ ticked as “hidden”. All documents are on Meridio.

Handouts to print out:

- ✓ Objectives and timetable
 - ✓ The slides, using the handout option. 3 slides per side of A4 is clearest. If you don't want a slide to be printed (eg it shows answers), you need to check carefully. Make sure you have slide 17 **marked as a hidden** slide, so that it is not printed on the slides handout.
 - ✓ Remember to reverse the process afterwards for the purpose of the slideshow in the training session – **un-hide** 17.
 - ✓ Exemptions summary.
 - ✓ Quiz (not the version with answers!)
 - ✓ sample Decision Notice
 - ✓ 3 publication scheme documents (definition document for higher education institutions, template guide to information for schools, model publication scheme).
 - ✓ Post-course reading.
- L&D please print off a **signature sheet**, with names completed, and copies of the **feedback form** (for anyone who wants to complete that in hard copy on the spot).
- **L&D please ask Facilities to unlock the DVD cabinet**

On the day – L&D

Please deliver the items for the session to the training room.

On the day - trainer

- Please turn up at least half an hour before the start of the session.
- Check the room has been set up – the training room will contain a DVD player, flipchart, a keyboard, a small control / login screen on the cupboard, a mouse/ pointer and a video conference screen which can be connected to the slides. Log in as yourself, then go to Meridio 1.17.04.03, Introduction to FOI, for the slides: “Introduction to FOI – Slides”. It's best to ensure that no calendar items or emails are going to pop up for you during the training session – so close down Outlook.

There is a DVD player in the cupboard. **NB You may need the help of Facilities to play the DVD due to some technical problems with sound.**

- Check that the hidden slides 17 and 31 that you want to be displayed in the session are un-ticked and no longer hidden.
- You will also need to use the DVD player, which is in the cupboard. Familiarise yourself with the operation of the equipment and use of the remote controls. Ask Facilities for help if needed.
- Check ventilation / temperature levels in the room – you will probably need to adjust these during the session too.

During the session

You will need:

- signature sheet
- handouts
- your own set of handouts
- your own copy of the slides with your notes
- DVD of "Tick Tock" (in the pack)
- the answers to the quiz (in the pack)
- preferably a spare copy of the Act and of the EIR.
- at the end, offer feedback forms for anyone who wants to complete it there and then or to take away; explain they will all receive one by email too.

After the session - trainers

Please leave the room as you found it; there are recycling bins in the ground floor kitchen for cups as well as for paper.

Turn off all equipment and air con and shut the windows.

It is courteous to return the L&D resources (pens, feedback forms etc) to them.

Give the completed signing-in sheet to L&D for them to complete their records.

L&D will complete names of delegates and trainers in their records.

L&D should email out copies of the feedback form to the delegates. They will also summarise the feedback, which will be placed on Meridio in due course.

Timings

The timings below are just an indication; how long a session takes in practice is very variable, dependent on the group and how much they want to get into a discussion. Now that we have introduced some pre and post course work, the sessions might be shorter.

Slides 1-17	up to 45 mins
Tick Tock DVD	17 minutes
Slides 19-20	6 minutes
BREAK	10 minutes
Slides 22-36	up to 45 mins
BREAK	5 minutes
Slides 38-53	25 minutes – from slide 46 mainly focus on DNs since other content is in post course handout
Quiz	25 mins total
	If done as individuals or groups wait until everyone's finished.
	However it often works better to do the quiz together.

Case study: background information (FS50088848)

Lord Birt

Lord Birt was Director General of the BBC until 2000. He subsequently became an adviser to the then PM Tony Blair. He had an unpaid post, with a specific remit to make unconventional suggestions, dubbed “blue sky thinking”. He was still in this post at the time of the request.

There was controversy over the role of Lord Birt, as it was not a normal political or civil service post. There had been a number of parliamentary questions about his role, and a select committee had wanted to question him about it.

In 2001, Lord Birt was working on research and proposals relating to criminal justice, an area in which he had no previous experience.

At the time of the request, the Government’s policies on crime had been published. Lord Birt’s recommendations were not adopted, although some of his background research was used.

Requested information

Agenda

There had never been an agenda for the meeting between the attorney general and Lord Birt.

Presentation slides

All but one of the slides were in the public domain. One slide had not been published. It showed a map of a particular estate in Sheffield, showing where burglaries had occurred. It showed that certain addresses in one street had suffered a disproportionate number of burglaries, many being targeted two, three, or four times in five years.

Briefing to the Attorney General

A legal secretary at the Attorney General's office briefed the Attorney General on Lord Birt's proposals. He was highly critical, describing some of the suggestions as naïve, unsupported by evidence, and requiring massive public expenditure.

Note of the meeting

The note recorded a number of suggestions by Lord Birt which did not subsequently become government policy. In particular, he advocated a massive increase in the use of indeterminate sentences. The Attorney General's view was that this would be extremely expensive, lead to severe prison overcrowding, and raise human rights concerns. Avenues for future consideration were also raised, including learning from other countries' experiences.

Two documents entitled "Ann Widdecombe parliamentary questions: Lord Birt background note"

(1) Relates to whether the presentation slides should be released to Ann Widdecombe. Explained that this was "highly sensitive from No. 10's point of view" and that any response would have to be run past No. 10. Did not discuss the content of the information except to say that Lord Birt was not advising the Attorney General but consulting him.

(2) Gives some background. States that a formal meeting with Lord Birt was held on 17 October and an informal meeting earlier. States that Lord Birt had not made any contribution to departmental policy although some of his research findings had been used.

Summary of FOI exemptions

Section	Description	Further condition	PIT?	Confirm or deny	Notes
21	Reasonably accessible by other means	None	Absolute	(no exemption)	
22	Held for future publication	Reasonable to withhold	Qualified	If C/D would disclose exempt info	
22A	Info held as part of ongoing research programme	Prejudice	Qualified	If C/D would / likely to prejudice	Wider than s22
23	Supplied by/relating to security bodies	None	Absolute	If C/D would disclose exempt info	Can be certified by Minister
24	National security	If required to safeguard and s23 n/a	Qualified	C/D exemption required to safeguard	Can be certified by Minister
26	Defence	Prejudice	Qualified	If C/D would / likely to prejudice	
27(1)	International relations	Prejudice	Qualified	If C/D would / likely to prejudice	
27(2)	Confidential from other state / international body	None	Qualified	If C/D would disclose exempt info	
28	Relations within UK	Prejudice	Qualified	If C/D would / likely to prejudice	
29	Economic interests	Prejudice	Qualified	If C/D would / likely to prejudice	
30(1)	Held for criminal investigations	None	Qualified	If information exempt	
30(2)	Investigations using confidential sources	None	Qualified	If information exempt	
31	Law enforcement	Prejudice, and s30 n/a	Qualified	If C/D would / likely to prejudice	
32	Contained only in court document	None	Absolute	If information exempt	
33	Audit functions	Prejudice	Qualified	If C/D would / likely to prejudice	Applies only to Audit bodies
34	Parliamentary privilege	If required to avoid infringement	Absolute	C/D exemption required to avoid infringement	Can be certified by Speaker of the House / Clerk of the Parliaments
35(1)(a)	Relates to formulation of govt policy	None	Qualified	If information exempt	Applies only to Government departments and the Welsh Assembly
35(1)(b)	Relates to ministerial comms / cabinet minutes	None	Qualified	If information exempt	Applies only to Government departments and the Welsh Assembly
35(1)(c)	Relates to advice by Law Officers	None	Qualified	If information exempt	Applies only to Government departments and the Welsh Assembly
35(1)(d)	Relates to Ministerial private office	None	Qualified	If information exempt	Applies only to Government departments and the Welsh Assembly
36	Conduct of public affairs - parliament	Prejudice*, and s35 n/a	Absolute	If C/D would / likely to prejudice*	Can be certified by Speaker of the House / Clerk of the Parliaments
36	Conduct of public affairs - other	Prejudice*, and s35 n/a	Qualified	If C/D would / likely to prejudice*	
37	Relates to comms with HM or honours	None	Mixture	If information exempt	Recently amended. Some aspects absolute, some qualified
38	Health and safety	Prejudice	Qualified	If C/D would / likely to prejudice	
39	Environmental information	None	(Qualified)	If information exempt	Deal with under EIRs
40(1)	Personal data of applicant	None	Absolute	If information exempt	Deal with as SAR
40(2)	Personal data of third party	Would contravene DPA	Absolute	If C/D would contravene DPA	
40(2)	Personal data of third party	Exempt from s.7(1)(c) DPA	Absolute	If information exempt from s.7(1)(a) DPA	
41	Obtained in confidence	Would be actionable breach	Absolute	If C/D would be actionable breach	
42	Legal professional privilege	None	Qualified	If C/D would disclose exempt info	
43(1)	Trade secrets	None	Qualified	No specific C/D exemption	
43(2)	Commercial interests	Prejudice	Qualified	If C/D would / likely to prejudice	
44	Prohibited by law	None	Absolute	If C/D would be prohibited by law	

* in reasonable opinion of qualified person, except for statistics.

The role of the ICO



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Say :

The contents of the following slides are incorporated into a post-course reading handout that you have been given. In this session we will therefore skim over them but will focus on the ICO's role in issuing Decision Notices.

(The reason for issuing a handout is because this course covers a wide range of content which is difficult to fit into the time available.)

What is the ICO's role re FOIA / EIR?

Independent regulator

- Decisions in individual complaints
 - Practice ...recommendations
 - Enforcement notices
 - Information notices
 - Undertakings
 - Section 77 criminal offences
- Not a "consumer champion"
Cannot grant compensation
Cannot "punish" public authorities

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Concentrate on DNs – they can read the others later but can read slide now.

Note that our powers under FOI and EIR are exactly the same.

We can do:

- Decisions in individual cases as to whether information should have been disclosed = decision notices
- Practice recommendations: Non-binding, published recommendations to public authorities who are generally not following good practice – even if not an actual breach of the legislation (naming and shaming)
- Enforcement notices – these are being used after a long time in which they were never used. Also information notices: we are encouraged to use these

more frequently.

- Information notices – requiring PA to produce information to us (when investigating a case)
- Undertakings – requires the PA to commit to certain actions
- Section 77 criminal offences – can be investigated by enforcement investigators – see later slide on this.

Section 50



Anyone who has made a request for information may ask the Information Commissioner for a **decision** as to whether the authority handled their request properly

Commissioner must then either:

- issue a decision notice OR
- explain why she is not making a decision



So, we have our dissatisfied requester. He's done what we said before, asked for internal review. He's still not happy.

Section 50 FOIA - applies to FOIA and EIR.

Differences from DP

Decision notice

- Has authority breached the Act?
- Legally binding
- May require authority to take steps e.g. disclose information
- Can be appealed
- Failure to comply is contempt of court

DPA assessment

- "Likely or unlikely" to have complied
- Our opinion on evidence before us
- We can change our mind
- Further enforcement notice needed to require any action



Contrasting ICO role re DP and FOIA.

Sample copy of a DN is in their pack – taken from ICO website.

Our response to an RFA (= Request for Assessment). is basically a letter; in contrast a DN is a legal notice and therefore has to be rigorous. NB DNs used to contain lots of analysis, case law etc. but a new simplified format was introduced in August 2011 following a project to review complaints handling.

This has important consequences:

- We investigate more thoroughly
- We're more bound by law and less by common sense
- There is far more case law, even on personal data issues, arising from FOI

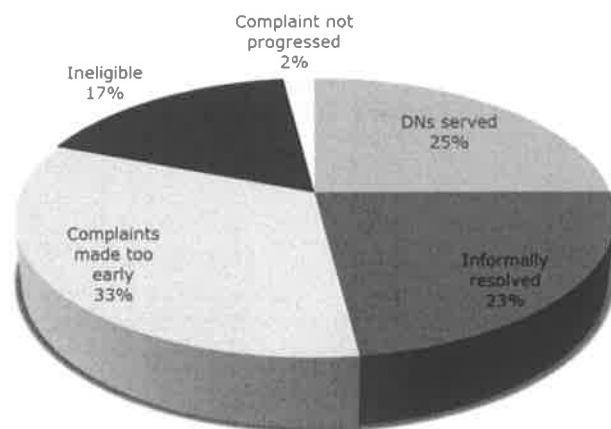
Total no of FOIA/EIR complaints

In 2017/18 the ICO received 5705 FOIA / EIR complaints – an increase of 5% on the previous year.

The number of complaints answered was 5784 - an increase of 11.8% on the previous year.

Outcome of cases

Outcome of FOIA/EIR complaints 2017/18
Updated from ICO Annual Report 26 July 2018



■ DNs served ■ Informally resolved
■ Complaints made too early ■ Ineligible
■ Complaint not progressed

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Summary of pie chart

These figures are colour-coded to match the pie chart.

Figures breakdown has remained largely similar each year. Previous year's figures are below, italicised in brackets.

DNs served = 25% of all case outcomes in 2017/18 (26%)

Informally resolved = 23% (25%)

Complaints made too early (eg no internal review) = 33% (30%)

Complaints made too late = 17% (16%)

Complaint not progressed = 2% (2%)

Alternative outcomes to a Decision Notice

Ineligible

- undue delay (over about two months)
- not FOIA/EIR

Too early - hasn't exhausted internal review

Informally resolved – parties reach agreement; withdrawn

Vexatious / frivolous complaint

Monitoring compliance

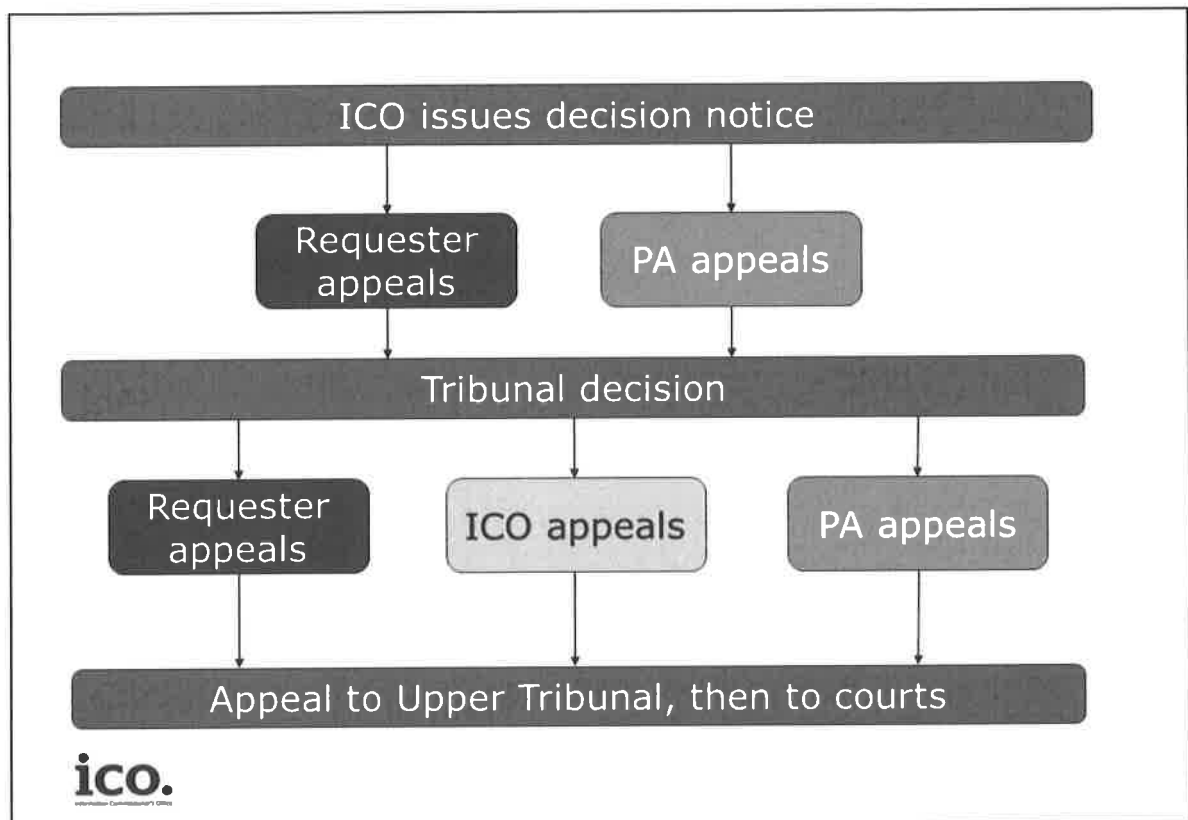
Consider consensual audit



Informal resolution – maybe one side accepts they're in the wrong, maybe there's a compromise – we encourage this.

Monitoring compliance – specifically relating to timeframes

Audit – whilst there is no funding for FOI audits there is an FOI option on the Audit scope



Usually 35 days to comply or 28 days to appeal

Either side can appeal to Information Tribunal – now the First Tier Tribunal (“FTT”) in the Information Rights division of the General Regulatory Chamber. **IMPORTANT** – consistently around the mid-twenty per cent of DNs are appealed each year, regardless of the increasing number of DNs issued (around 25% appealed in 2015-16, and just under that for 2016-17).

Tribunal reviews our decision – looks at all the evidence, facts and argument

Tribunal decision does not set a legal precedent (ie we are not obliged to follow it in future cases) – it just replaces our DN so it has the same status.

Next stage is to appeal to the Upper Tribunal on a point of law (although some cases can be referred directly there as court of first instance instead of going via the FTT). UT decisions do set a legal precedent for future cases..

Then to Court of Appeal, then to the Supreme Court (eg Evans “Black Spider Memos” case).

These look at law only and set precedent.

EIR cases can go the European Court of Justice next.

Section 77 FOIA offence (regulation 19 EIR)

- Deliberately destroying, altering or concealing a record to prevent disclosure of requested info
- Applies to FOI requests and DP subject access requests
- Only applies where information not exempt under FOIA / excepted under EIR
- Criminal offence leading to a fine
- BUT hard to enforce - 6 months limit from date of offence. The Coalition Government said that it intended to change this to 6 months from the date the ICO becomes aware of the commission of the offence. This change has not yet been made.



Summarise

This is the only offence in the FOI Act and it applies both to individuals and to authorities depending whether the person does it off their own bat or not. Equivalent under EIR is r19.

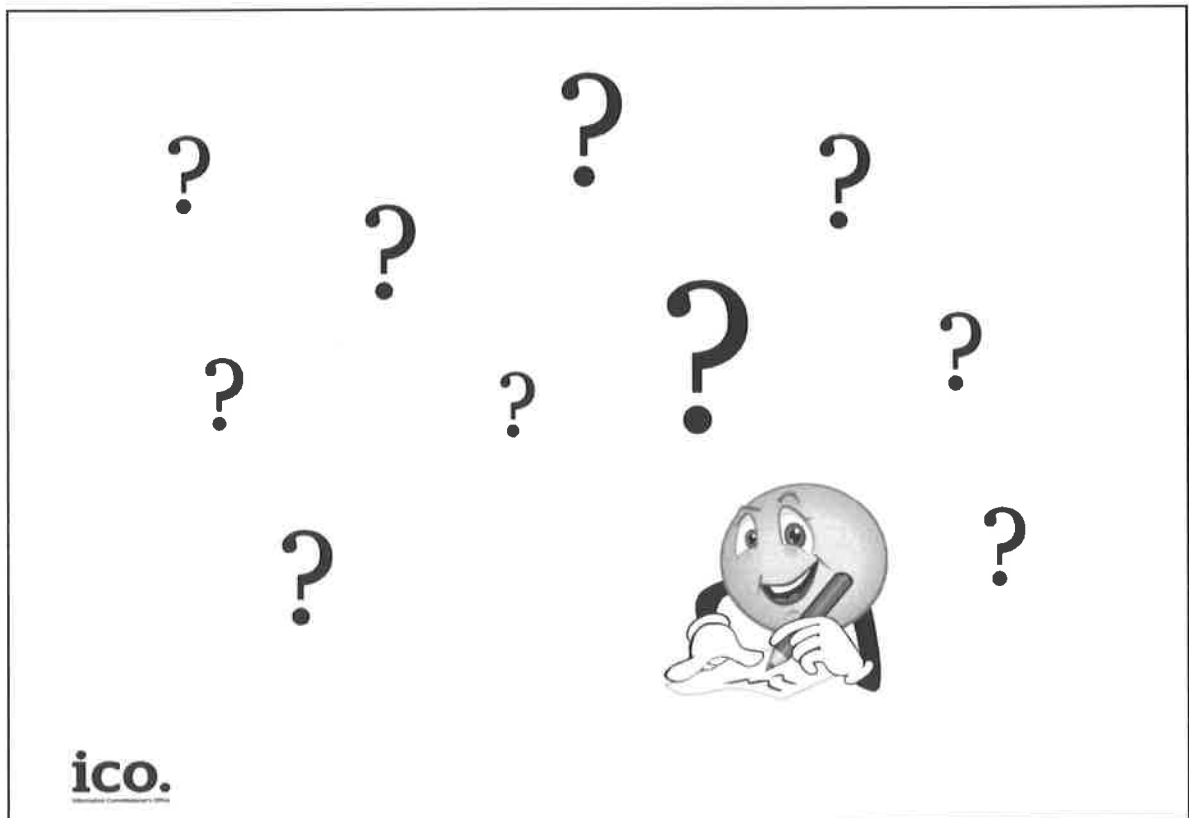
Has to be after request received. Has to be information that would otherwise have been released i.e. not exempt or excepted.

Difficult to use this due to 6 mth time limit, which Govt had refused to extend – but Justice Committee report on Post Legislative Scrutiny recommended the offence become triable either way ie in Crown Court as well as Mags Ct. in order to remove this restriction. Coalition Government, in its 30.11.12 response to Justice Committee, accepted there is a problem but did not think it necessary for s77 cases to be heard in Crown Court. Therefore it has not agreed to make the offence triable either way but instead has stated as follows:

“To address the problem, the Government is instead minded to extend the time available to the ICO to bring a prosecution to six months from the point at which it becomes aware of the commission of an offence rather than six months from the point at which such an offence occurs.” This change has not yet been made (as at March 2016).

Recently (March 2018) possible s77 case the ICO is

pursuing



Give out the quiz, unless it's already in the delegates' bundle.

Quiz time

You can confer, you can look it up – it's to make you think about it and we'll talk it through after

Or if short of time do the quiz together

Before final slide (overleaf)

VALIDATION FORMS

NB at end remind the delegates to complete validation forms supplied in session – give these out. Alternatively online via L&D

For more information, see our
guidance page on www.ico.org.uk

and the FOI Policy knowledge base on
ICON



Model Publication Scheme

This model publication scheme has been prepared and approved by the Information Commissioner. It may be adopted without modification by any public authority without further approval and will be valid until further notice.

This publication scheme commits an authority to make information available to the public as part of its normal business activities. The information covered is included in the classes of information mentioned below, where this information is held by the authority. Additional assistance is provided to the definition of these classes in sector specific guidance manuals issued by the Information Commissioner.

The scheme commits an authority:

- To proactively publish or otherwise make available as a matter of routine, information, including environmental information, which is held by the authority and falls within the classifications below.
- To specify the information which is held by the authority and falls within the classifications below.
- To proactively publish or otherwise make available as a matter of routine, information in line with the statements contained within this scheme.
- To produce and publish the methods by which the specific information is made routinely available so that it can be easily identified and accessed by members of the public.
- To review and update on a regular basis the information the authority makes available under this scheme.
- To produce a schedule of any fees charged for access to information which is made proactively available.
- To make this publication scheme available to the public.
- To publish any dataset held by the authority that has been requested, and any updated versions it holds, unless the authority is satisfied that it is not appropriate to do so; to publish the dataset, where reasonably practicable, in an electronic form that is capable of re-use; and, if any information in the dataset is a relevant copyright work and the public authority is the only owner, to make the information available for re-use under a specified licence.

The term 'dataset' is defined in section 11(5) of the Freedom of Information Act. The terms 'relevant copyright work' and 'specified licence' are defined in section 19(8) of that Act.

Classes of Information

Who we are and what we do.

Organisational information, locations and contacts, constitutional and legal governance.

What we spend and how we spend it.

Financial information relating to projected and actual income and expenditure, tendering, procurement and contracts.

What our priorities are and how we are doing.

Strategy and performance information, plans, assessments, inspections and reviews.

How we make decisions.

Policy proposals and decisions. Decision making processes, internal criteria and procedures, consultations.

Our policies and procedures.

Current written protocols for delivering our functions and responsibilities.

Lists and Registers.

Information held in registers required by law and other lists and registers relating to the functions of the authority.

The Services we Offer.

Advice and guidance, booklets and leaflets, transactions and media releases. A description of the services offered.

The classes of information will not generally include:

- Information the disclosure of which is prevented by law, or exempt under the Freedom of Information Act, or is otherwise properly considered to be protected from disclosure.
- Information in draft form.
- Information that is no longer readily available as it is contained in files that have been placed in archive storage, or is difficult to access for similar reasons.

The method by which information published under this scheme will be made available

The authority will indicate clearly to the public what information is covered by this scheme and how it can be obtained.

Where it is within the capability of a public authority, information will be provided on a website. Where it is impracticable to make information available on a website or when an individual does not wish to access the information by the website, a public authority will indicate how information can be obtained by other means and provide it by those means.

In exceptional circumstances some information may be available only by viewing in person. Where this manner is specified, contact details will be provided. An appointment to view the information will be arranged within a reasonable timescale.

Information will be provided in the language in which it is held or in such other language that is legally required. Where an authority is legally required to translate any information, it will do so.

Obligations under disability and discrimination legislation and any other legislation to provide information in other forms and formats will be adhered to when providing information in accordance with this scheme.

Charges which may be made for information published under this scheme

The purpose of this scheme is to make the maximum amount of information readily available at minimum inconvenience and cost to the public. Charges made by the authority for routinely published material will be justified and transparent and kept to a minimum.

Material which is published and accessed on a website will be provided free of charge.

Charges may be made for information subject to a charging regime specified by Parliament.

Charges may be made for actual disbursements incurred such as:

- photocopying
- postage and packaging
- the costs directly incurred as a result of viewing information

Charges may also be made for information provided under this scheme where they are legally authorised, they are in all the circumstances, including the general principles of the right of access to information held by public authorities, justified and are in accordance with a published schedule or schedules of fees which is readily available to the public.

Charges may also be made for making datasets (or parts of datasets) that are relevant copyright works available for re-use. These charges will be in accordance with either regulations made under section 11B of the Freedom of Information Act or other enactments.

If a charge is to be made, confirmation of the payment due will be given before the information is provided. Payment may be requested prior to provision of the information.

Written Requests

Information held by a public authority that is not published under this scheme can be requested in writing, when its provision will be considered in accordance with the provisions of the Freedom of Information Act.

Introduction to FOI quiz - with answers

You may refer to your handouts and copies of FOIA and EIR

1. Underline the bodies which are covered by FOIA.

Alderley Edge Parish Council

BBC Partially

Boots the Chemists Partially – NHS prescriptions

Cambridge Enterprise Ltd (a company wholly owned by Cambridge University)

Christie Hospital NHS Foundation Trust

City of Edinburgh Council Scotland

Eton College Private

General Medical Council

Home Office

Homes for Islington (housing association wholly owned by Islington Council)

HSBC Private

Mayor of Greater Manchester/ Greater Manchester Combined Authority

Manchester Metropolitan University

MI5 not listed as a PA in Schedule 1

Northern Ireland Assembly

Scotland Office Is a PA since part of central government – present this point as a way of emphasising need to think carefully

United Utilities Not subject to FOIA. (However although it is a private company, it is subject to the EIR.)

2. Which of these pieces of information are “held” by the ICO (i.e. could be considered for disclosure under FOIA)?

The minutes of your last team meeting

These course materials

A letter sent in to the ICO by a complainant - though not likely to be released

Archives which the ICO stores in an off-site warehouse

Your personal diary which you've left at the office

A report sent to the ICO by an external audit company

Trainer's copy

Responses to a survey conducted on our behalf by another company depending on
nature of contract; also may not be disclosed depending
A note of advice given by the ICO helpline held by a private company

3. Which of the following requests are valid under FOIA? (NB this does not necessarily mean you would disclose the information)

FROM:
pseudonym@gmail.com

Please send me a copy
of your most recent
accounts.

Thank you.

Sue D Nym
No – false name

17 September 2009

Dear Sirs

1. How many **staff** do
you employ?
2. How many of them are
Freemasons?

Name & address
withheld
No – no name / address

4 Steep St
Lincoln

Dear sir / madam

Please send me the
following documents:
1. a copy of your
Equal Opportunities
policy
2. the minutes of
the meeting at which
this was adopted

Yours, Mr J Roberts
Yes

FROM:
annoyedofancoats@hotmail.com

Dear Commissioner

Why have you taken so
long to deal with my
case?

Derek Smith
Yes – but could be SAR?

Mr Roberts rang again –
he'd like to know how many
complaints we've received
about Greater Manchester
Police. Can you give him a
ring back? No – verbal (but valid
under EIR)

(This represents a post-it note)

4. Fill in the gaps using the numbers in the box (there will be three left over)

20

450

45

2000

40

25

23

2005

600

FOIA contains **23** exemptions (arguably)

Authorities should respond to requests for information within **20** working days

The first time you could make a FOIA/EIR request was in **2005**

Trainer's copy

Good practice in responding to FOIA requests is covered by the section **45** Code

The Ministry of Justice could refuse a request under Section 12 if the estimated cost would exceed £**600**

The ICO could refuse a request under Section 12 if the estimated cost would exceed £**450**

5. Which of these are obligations on public authorities under FOIA?

	Must	Must not	If appropriate
Respond to requests in writing	✓		
Provide advice and assistance			✓
Ask for clarification of the request			✓
Send a response within 20 working days	✓		
Confirm or deny whether the information is held			✓
Consider why the requester wants the information			(✓) e.g. vexatious
Offer an internal review of an FOI request			✓ if it has a complaints procedure
Mention the right to complain to the ICO in the refusal notice	✓		

6. In what circumstances may a public authority take more than 20 working days to consider a FOIA request? When it needs more time to consider the PIT (but it must specify the exemption beforehand).

Also possible: where days include a UK Bank Holiday; or where the clock is reset when PA seeks clarification (treated as a new request), s.9 costs – this pauses the time; schools....

7. In what circumstances may a public authority take more than 20 working days to consider an EIR request? When the complexity or volume of the requested information means that it is impractical to respond within 20 working days; or clarification under r9(4) – treated as a new request.

8. What is the difference between an absolute and qualified exemption? Qualified exemptions have an associated public interest test (PIT).

9. How can you work out whether an exemption is absolute or qualified in FOIA? Check section 2(3) for list of absolute exemptions – if the exemption isn't listed here then it must be qualified - could also look out for words such as 'likely to prejudice' in the wording of the exemption – this would indicate a qualified exemption (also see your helpful table handout!).

10. Which of these are not genuine exemptions under FOIA.

(a) national security

> PTO

(b) information about the deceased

(c) personal data of the requester

(d) distress to others

(e) investigations

(f) information likely to cause embarrassment

(g) health and safety

(h) Confidentiality

11. Under the EIR, are the following TRUE or FALSE?

(a) Nearly all exceptions are subject to the public interest test. TRUE

(b) In its refusal notice, the public authority must offer an internal review. TRUE

(c) A request for information from an individual made by telephone can be a valid request. TRUE

12. Fill in the gaps using the appropriate words below:

may	must	outweighs	outweighs or is equal to
-----	------	-----------	--------------------------

An authority may withhold information if the public interest in maintaining the exemption outweighs the public interest in disclosure

An authority must disclose information if the public interest in disclosure outweighs or is equal to the public interest in maintaining the exemption

13. TRUE or FALSE?

NB "PA" means a public authority subject to FOIA

(a) All PAs must adopt a publication scheme true

(b) It is compulsory to make a publication scheme available online false – but they should be published online where possible.

Introduction to FOI quiz

You may refer to your handouts and copies of FOIA and EIR

1. Underline the bodies which are covered by FOIA.

Alderley Edge Parish Council

BBC

Boots the Chemists

Cambridge Enterprise Ltd (a company wholly owned by Cambridge University)

Christie Hospital NHS Foundation Trust

City of Edinburgh Council

Eton College

General Medical Council

Home Office

Homes for Islington (housing association wholly owned by Islington Council)

HSBC

Manchester Metropolitan University

Mayor of Greater Manchester / Greater Manchester Combined Authority

MI5

Northern Ireland Assembly

Scotland Office

United Utilities

2. Which of these pieces of information are "held" by the ICO (i.e. could be considered for disclosure under FOIA)?

The minutes of your last team meeting

These course materials

A letter sent in to the ICO by a complainant

Archives which the ICO stores in an off-site warehouse

Your personal diary which you've left at the office

A report sent to the ICO by an external audit company

Responses to a survey conducted on our behalf by another company

A note of advice given by the ICO helpline held by a private company

Delegates' copy

3. Which of the following requests are valid under FOIA? (NB this does not necessarily mean you would disclose the information)

FROM:
pseudonym@gmail.com

Please send me a copy of your most recent accounts.

Thank you.

Sue D Nym

17 September 2009

Dear Sirs

1. How many **staff** do you employ?
2. How many of them are Freemasons?

Name & address withheld

4 Steep St
Lincoln

Dear sir / madam

Please send me the following documents:
1. a copy of your Equal Opportunities policy
2. the minutes of the meeting at which this was adopted

Yours, Mr J Roberts

FROM:
annoyedofancoats@hotmail.com

Dear Commissioner

Why have you taken so long to deal with my case?

Derek Smith

Mr Roberts rang again - he'd like to know how many complaints we've received about Greater Manchester Police. Can you give him a ring back

(This represents a post-it note)

4. Fill in the gaps using the numbers in the box (there will be three left over)

20

450

45

2000

40

25

23

2005

600

FOIA contains ____ exemptions (arguably)

Authorities should respond to requests for information within ____ working days

The first time you could make a FOIA/EIR request was in ____

Good practice in responding to FOIA requests is covered by the section ____ Code

The Ministry of Justice could refuse a request under Section 12 if the estimated cost would exceed £ ____

The ICO could refuse a request under Section 12 if the estimated cost would exceed £ ____

5. Which of these are obligations on public authorities under FOIA?

	Must	Must not	If appropriate
Respond to requests in writing			
Provide advice and assistance			
Ask for clarification of the request			
Send a response within 20 working days			
Confirm or deny whether the information is held			
Consider why the requester wants the information			
Offer an internal review of an FOI request			
Mention the right to complain to the ICO in the refusal notice			

6. In what circumstances may a public authority take more than 20 working days to consider a FOIA request?

7. In what circumstances may a public authority take more than 20 working days to consider an EIR request?

8. What is the difference between an absolute and qualified exemption?

9. How can you work out whether an exemption is absolute or qualified in FOIA?

10. Which of these are not genuine exemptions under FOIA.

- (a) national security**
- (b) information about the deceased**
- (c) personal data of the requester**
- (d) distress to others**
- (e) investigations**
- (f) information likely to cause embarrassment**
- (g) health and safety**
- (h) Confidentiality**

11. Under the EIR, are the following TRUE or FALSE?

- (a) Nearly all exceptions are subject to the public interest test.**
- (b) In its refusal notice, the public authority must offer an internal review.**
- (c) A request for information from an individual made by telephone can be a valid request.**

12. Fill in the gaps using the appropriate words below:

may	must	outweighs	outweighs or is equal to
------------	-------------	------------------	---------------------------------

An authority _____ withhold information if the public interest in maintaining the exemption outweighs the public interest in disclosure

An authority must disclose information if the public interest in disclosure _____ the public interest in maintaining the exemption

13. TRUE or FALSE?

NB "PA" means a public authority subject to FOIA

- (a) All PAs must adopt a publication scheme**
- (b) It is compulsory to make a publication scheme available online.**

Introduction to freedom of information

Pre-course instructions for managers and delegates

We are looking forward to meeting all delegates at the training session.

Aim of the training

This session is an introduction to the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (the EIR).

The ICO requires all staff, regardless of their role, to attend this training. It is therefore aimed both at new starters in FOI roles (who will also receive further, more detailed training on the subject) and at ICO staff who do not use FOIA / the EIR on a day to day basis.

Managers

It's important for managers to be aware of the training delegates receive in this session and what the delegates need to do to prepare and to bring with them.

There will be some reading for delegates to complete before and after the training session, since it is not possible to cover all topics fully in the time available. Please allow them to have time to do this.

Delegates

In order to prepare for the training, delegates are required to do the following:

Pre-course reading

- Guide to Freedom of Information Read the initial sections: "In brief", "In more detail", "What is FOIA for?" and "The principles behind FOIA"
- Guide to the Environmental Information Regulations Read the initial sections "In brief", "In more detail", "What are the EIR for?" and "The principles behind the EIR"
- The enclosed handout on the background to FOIA (and which we will cover briefly in the session)

Bring copies of the legislation to the session

You must bring to the session a copy of each of the following pieces of legislation. If you do not already have your own copies, please borrow them from a colleague or print them off from <http://www.legislation.gov.uk/>.

- The Freedom of Information Act 2000
- The Environmental Information Regulations 2004

After the training session, please do the following:

- familiarise yourself with both Guides (see links above) so you'll know where to find further details when needed; and
- read the handout you will have been given on the role of the ICO. Part of this will have been covered during the session, with a particular focus on Decision Notices.

Introduction to Freedom of Information

Objectives

This session is an introduction to the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR). It is aimed at all ICO staff: new starters in FOI roles as well as ICO staff who do not use FOIA on a day to day basis. By the end of today's session, you should understand and be able to apply in a quiz:

- what the FOIA and EIR are
- our obligations as a public authority
- how an authority should deal with a request and when they can refuse it
- what the model publication scheme is
- the ICO's powers and duties

Timetable for today

What is FOIA? – you will have prepared for this section by doing pre-course reading, as sent to you and your manager

What are the Environmental Information Regulations?

"Tick Tock" DVD – 17 minutes

Requests for information

The right to know

Validity of requests

Break - 10 minutes

Receiving a request

Time limits

Costs and fees

Persistent / difficult requests

FOIA exemptions

Break - 5 minutes

EIR exceptions

Neither confirm nor deny (NCND)

Refusal notices

Publishing information – publication schemes

FOI at the ICO – also see post-course reading

Quiz – approx 25 minutes

End

Resources

You can find the full up-to-date text of the FOIA and the EIR on www.legislation.gov.uk

The relevant subsidiary legislation is The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 and The Freedom of Information (Time for Compliance with Request) Regulations 2004.

The model publication scheme and related documents can be found on the ICO website, by choosing the “For organisations” option in the box at the left, and selecting the FOI Guidance Index, then Publication Schemes.

The ICO’s own guide to information can be reached from the foot of the home page on the ICO website: About the ICO – Publication scheme.

The s.45 code of practice is at <http://www.justice.gov.uk/guidance/docs/foi-section45-code-of-practice.pdf> and the revised s.46 code can be found at <http://www.justice.gov.uk/guidance/docs/foi-section-46-code-of-practice.pdf>

Please also see our FOI and EIR guidance pages, and in particular:

[Guide to FOIA](#)

[Guide to the EIR](#)

Post-course work

Don’t forget to complete this (as mentioned in instructions emailed to you and your manager before the course):

- familiarise yourself with both Guides (see links above) so you’ll know where to find further details when needed; and
- read the handout you will receive today on The Role of the ICO. We will cover part of this during the session, with a particular focus on Decision Notices.

The role of the ICO



What is the ICO's role re FOIA / the EIR?

Independent regulator

- Decisions in individual complaints as to whether information should have been disclosed
- Practice recommendations – non-binding, published recommendations to public authorities who are generally not following good practice – even if not an actual breach of the legislation (so-called “naming and shaming”)
- Enforcement notices
- Information notices – requiring the public authority to produce information to us (when we are investigating a case)
- Undertakings – requires the public authority to commit to certain actions
- Section 77 criminal offences – can be investigated by enforcement investigators – see later

Not a “consumer champion”

Cannot grant compensation

Cannot “punish” public authorities

NB Our powers under FOIA and the EIR are exactly the same

Section 50 FOIA

This applies to both FOIA and the EIR.

Anyone who has made a request for information may ask the Information Commissioner for a **decision** as to whether the authority handled their request properly.

Commissioner must then either:

- issue a **decision notice**; OR
- explain why he is not making a decision.

Differences from DP

Differences from the way ICO handles complaints under the Data Protection Act

Decision notice

- Has authority breached FOIA / the EIR?
- Legally binding
- May require authority to take steps eg disclose information
- Can be appealed
- Failure to comply is contempt of court

DPA assessment

- "Likely or unlikely" to have complied
- Our opinion on evidence before us
- We can change our mind
- Further enforcement needed to require any action

Since a Decision Notice (DN) is a legal notice, this has consequences:

- We investigate FOI cases more thoroughly
- We're more bound by law
- Far more case law arises from FOI

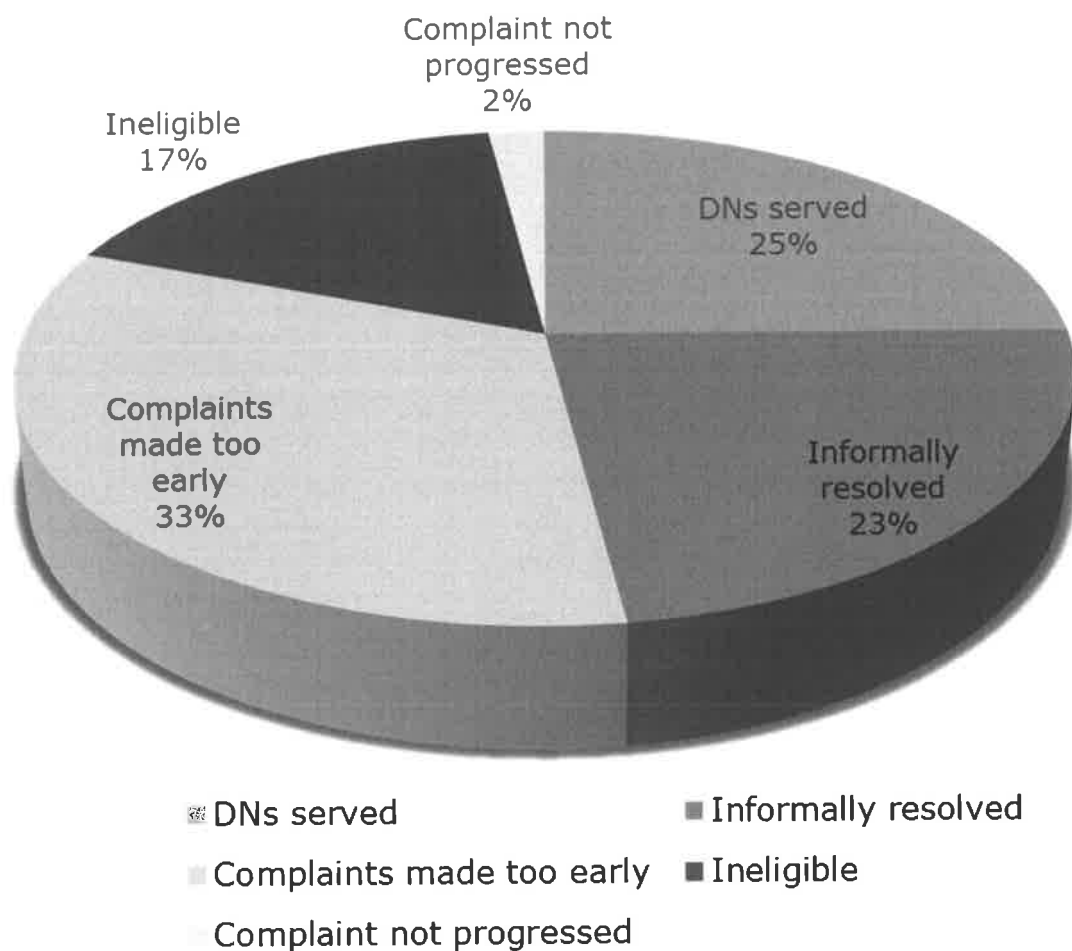
Total no of FOIA/EIR complaints

In 2017/18 the ICO received 5705 FOIA / EIR complaints – an increase of 5% on the previous year.

The number of complaints answered was 5784 - an increase of 11.8% on the previous year.

Outcome of FOIA/EIR complaints 2017/18

Updated from ICO Annual Report 26 July 2018



The figures are colour-coded to match the pie chart.
Figures breakdown has remained largely similar each year. Previous year's figures are below, italicised in brackets.

DNs served = 25% of all case outcomes in 2017/18 (26%)

Informally resolved = 23% (25%)

Complaints made too early (eg no internal review) = 33% (30%)

Complaints made too late = 17% (16%)

Complaint not progressed = 2% (2%)

Alternative outcomes to a Decision Notice

Ineligible

- undue delay (over about two months)
- not FOIA/EIR

Too early - hasn't exhausted internal review

Informally resolved

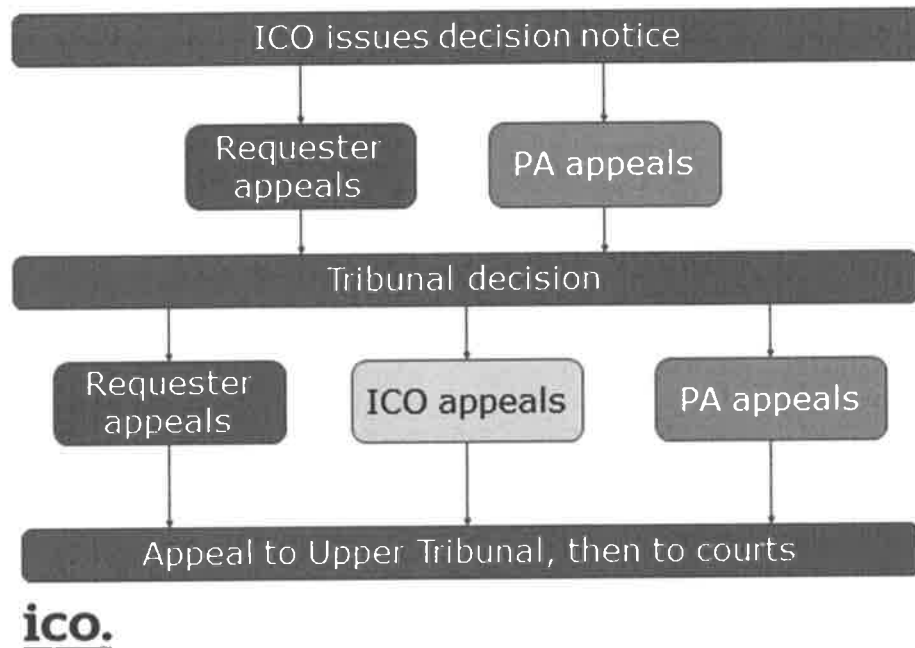
- withdrawn
- parties reach agreement - maybe one side accepts they're in the wrong, maybe there's a compromise – we encourage this.

Vexatious / frivolous complaint

Monitoring compliance – specifically relating to timeframes

Consider consensual audit - whilst there is no funding for FOI audits, there is an FOI option on the Audit scope.

Appeal sequence



- Usually 35 days to comply or 28 days to appeal
- Either side can appeal to Information Tribunal – the First Tier Tribunal (“FTT”) in the Information Rights division of the General Regulatory Chamber.
- Consistently around 25% of DNs are appealed each year, regardless of the increasing number of DNs issued (around 25% appealed in 2015-16, and just under that for 2016-17).
- Tribunal reviews our decision – looks at all the evidence, facts and argument. Tribunal decision does not set a legal precedent – it just replaces our DN so it has the same status. ICO is not bound to follow the decision in future cases.
- Next stage is to appeal to the Upper Tribunal (UT) on a point of law (although some cases can be referred directly there as court of first instance, instead of going via the FTT). UT decisions do set a precedent and are binding on the ICO in future cases.
- Next stage is to Court of Appeal, then to the Supreme Court. These look at law only and do set legal precedents.
- EIR cases can go the European Court of Justice next.

Section 77 FOIA criminal offence (and regulation 19 EIR)

- Deliberately destroying, altering or concealing a record to prevent disclosure of requested info
- Applies to FOI requests and DP subject access requests – after request received
- Offence may be committed by individuals and authorities depending on responsibility for the action
- Only applies where information not exempt under FOIA / excepted under EIR
- Criminal offence leading to a fine (the only criminal offence in FOI)
- BUT hard to enforce - 6 months limit from date the offence occurs – so not yet used. The Government has said (in its response of 30.11.12 to Justice Committee's 2012 report on Post Legislative Scrutiny of FOIA) that it intends to change this to permit prosecution by the ICO up to 6 months from the date the ICO becomes aware of the commission of the offence. To date this change has not been made (as at June 2016).

NB Possible s77 case under way in 2018.

Freedom of Information

Guide to information available from School under the model publication scheme

Note: This template is intended to assist smaller schools (and in particular primary and nursery schools) in England, Wales and Northern Ireland to meet their publication scheme obligations. Please refer to the document "How to complete the Guide to Information for Schools".

Information to be published. This includes datasets where applicable – please see "How to complete the Guide to Information".	How the information can be obtained	Cost
Class 1 - Who we are and what we do (Organisational information, structures, locations and contacts) This will be current information only	(hard copy and/or website)	

Freedom of Information

Guide to information available from School under the model publication scheme

Who's who in the school		
Who's who on the governing body / board of governors and the basis of their appointment		
Instrument of Government / Articles of Association		
Contact details for the Head teacher and for the governing body, via the school (named contacts where possible).		
School prospectus (if any)		
Annual Report (if any)		
Staffing structure		
School session times and term dates		

Freedom of Information

Guide to information available from School under the model publication scheme

Address of school and contact details, including email address.		
Class 2 – What we spend and how we spend it (Financial information relating to projected and actual income and expenditure, procurement, contracts and financial audit) Current and previous financial year as a minimum	(hard copy and/or website)	
Annual budget plan and financial statements		
Capital funding		
Financial audit reports		
Details of expenditure items over £2000 – published at least annually but at a more frequent quarterly or six-monthly interval where		

Freedom of Information

Guide to information available from School under the model publication scheme

practical.		
Procurement and contracts the school has entered into, or information relating to / a link to information held by an organisation which has done so on its behalf (for example, a local authority or diocese).		
Pay policy		
Staff allowances and expenses that can be incurred or claimed, with totals paid to individual senior staff members (Senior Leadership Team or equivalent, whose basic actual salary is at least £60,000 per annum) by reference to categories.		
Staffing, pay and grading structure. As a minimum the pay information should include salaries for senior staff (Senior Leadership Team or equivalent as above) in bands of £10,000; for more junior posts, by salary range.		

Freedom of Information

Guide to information available from School under the model publication scheme

Governors' allowances that can be incurred or claimed, and a record of total payments made to individual governors.		
Class 3 – What our priorities are and how we are doing (Strategies and plans, performance indicators, audits, inspections and reviews) Current information as a minimum	(hard copy or website)	
School profile (if any) And in all cases: <ul style="list-style-type: none"> Performance data supplied to the English or Welsh Government or to the Northern Ireland Executive, or a direct link to the data 		

Freedom of Information

Guide to information available from School under the model publication scheme

<ul style="list-style-type: none"> • The latest Ofsted / Estyn / Education and Training Inspectorate report <ul style="list-style-type: none"> - Summary - Full report • Post-inspection action plan 		
Performance management policy and procedures adopted by the governing body.		
Performance data or a direct link to it		
The school's future plans; for example, proposals for and any consultation on the future of the school, such as a change in status		

Freedom of Information

Guide to information available from School under the model publication scheme

Safeguarding and child protection		
Class 4 – How we make decisions (Decision making processes and records of decisions) Current and previous three years as a minimum	(hard copy or website)	
Admissions policy/decisions (not individual admission decisions) – where applicable		
Agendas and minutes of meetings of the governing body and its committees. (NB this will exclude information that is properly regarded as private to the meetings).		
Class 5 – Our policies and procedures (Current written protocols, policies and procedures for delivering our services and responsibilities)	(hard copy or website)	

Freedom of Information

Guide to information available from School under the model publication scheme

<p>Current information only.</p> <p>As a minimum these must include policies, procedures and documents that the school is required to have by statute or by its funding agreement or equivalent, or by the Welsh or English government or the Northern Ireland Executive. These will include policies and procedures for handling information requests. In addition, for Wales, this will include a Welsh Language Scheme in accordance with the Welsh Language Act 1993. For Northern Ireland, this will include an equality scheme / statement in accordance with the Northern Ireland Act 1998.</p>		
<p>Records management and personal data policies, including:</p> <ul style="list-style-type: none"> • Information security policies • Records retention, destruction and archive policies • Data protection (including information sharing policies) 		
Charging regimes and policies.		

Freedom of Information

Guide to information available from School under the model publication scheme

<p>This should include details of any statutory charging regimes. Charging policies should include charges made for information routinely published. They should clearly state what costs are to be recovered, the basis on which they are made and how they are calculated.</p> <p>If the school charges a fee for re-licensing the use of datasets, it should state in its guide how this is calculated (please see "How to complete the Guide to information").</p>		
<p>Class 6 – Lists and Registers</p> <p>Currently maintained lists and registers only (this does not include the attendance register).</p>	(hard copy or website; some information may only be available by inspection)	
Curriculum circulars and statutory instruments		

Freedom of Information

Guide to information available from School under the model publication scheme

Disclosure logs		
Asset register		
Any information the school is currently legally required to hold in publicly available registers		
Class 7 – The services we offer (Information about the services we offer, including leaflets, guidance and newsletters produced for the public and businesses) Current information only	(hard copy or website; some information may only be available by inspection)	
Extra-curricular activities		
Out of school clubs		

Freedom of Information

Guide to information available from School under the model publication scheme

Services for which the school is entitled to recover a fee, together with those fees		
School publications, leaflets, books and newsletters		
Additional Information This will provide schools with the opportunity to publish information that is not itemised in the lists above		

Freedom of Information

Guide to information available from School under the model publication scheme

SCHEDULE OF CHARGES

This describes how the charges have been arrived at and should be published as part of the guide.

TYPE OF CHARGE	DESCRIPTION	BASIS OF CHARGE
Disbursement cost	Photocopying/printing @ ..p per sheet (black & white)	Actual cost *
	Photocopying/printing @ ..p per sheet (colour)	Actual cost
	Postage	Actual cost of Royal Mail standard

Template guide to information for schools

Version 3

20130830

Freedom of Information

Guide to information available from School under the model publication scheme

		2 nd class
Statutory Fee		In accordance with the relevant legislation (quote the actual statute)
Other		

* the actual cost incurred by the public authority

Freedom of Information Act 2000

Definition document for universities and other higher education institutions.

This guidance gives examples of the kinds of information that we would expect universities and other higher education institutions (collectively all known for the purpose of this document as HEIs) to provide in order to meet their commitments under the model publication scheme. We would expect HEIs to make the information in this definition document available unless:

- they do not hold the information;
- the information is exempt under one of the FOIA exemptions or Environmental Information Regulations (EIR) exceptions, or its release is prohibited under another statute;
- the information is readily and publicly available from an external website to which the HEI has already provided it - the HEI must provide a direct link to that information;
- the information is archived, out of date or otherwise inaccessible; or
- it would be impractical or resource-intensive to prepare the material for routine release.

The guidance is not meant to give an exhaustive list of everything that should be covered by a publication scheme. The legal commitment is to the model publication scheme, and HEIs should look to provide as much information as possible on a routine basis.

Publishing datasets for re-use

Public authorities must publish under their publication scheme any dataset they hold that has been requested, together with any updated versions, unless they are satisfied that it is not appropriate to do so. So far as reasonably practicable, they must publish it in an electronic form that is capable of re-use.

If the dataset or any part of it is a relevant copyright work and the public authority is the only owner, the public authority must make it available for re-use under the terms of a specified licence. Datasets in

which the Crown owns the copyright or the database rights are not relevant copyright works.

The Datasets Code of Practice recommends that public authorities make datasets available for re-use under the Open Government Licence.

The term 'dataset' is defined in section 11(5) of FOIA. The terms 'relevant copyright work' and 'specified licence' are defined in section 19(8) of FOIA. The ICO has published guidance on the dataset provisions in FOIA. This explains what is meant by "not appropriate" and "capable of re-use".

Who we are and what we do

Organisational information, structures, locations and contacts.

We would expect information in this class to be current information only.

- **Legal framework**

Information relating to the legal and corporate status of the institution.

- **How the institution is organised**

Information about the management structure of the institution, including a description of the Statutory Bodies and the organisational structure together with a description of the work of each unit and the names and responsibilities of key personnel. The information should include faculty and department structures and identify senior personnel. Institutions should also provide terms of reference, membership and description of all boards and committees.

- **Location and contact details**

If possible, named contacts should be given in addition to contact phone numbers and email addresses.

- **Lists of and information relating to organisations which the HEI has responsibility for, those it works in partnership with, those it sponsors and companies wholly or partially owned by it.**

On the basis that most of these bodies will be responsible for their

own affairs, this information only needs to be sufficient to identify the relationship between these bodies (such as business, the professions and the community) and the HEI.

- **Student activities**

Information relating to the operation and activities of the Student Union and other clubs, associations and non-academic activities that are organised for or by the students can also be included where this information is held by the HEI.

What we spend and how we spend it

Financial information relating to projected and actual income and expenditure, procurement, contracts and financial audit.

We would expect as a minimum that financial information for the current and previous two financial years should be available.

- **Funding / income**

Information on the sources of funding and income, such as Funding Council grants, tuition fees, endowment, rents and investment income (including investment strategy).

- **Financial statements, budgets and variance reports**

Details of expenditure over £25,000, including costs, supplier and transaction information. This should be published at least annually and, where practical, we would also expect it to be published on a half yearly or quarterly basis.

Financial information in enough detail to allow the public to see where money is being spent, where an HEI is or has been planning to spend it, and the difference between the two. Financial information should be published at least annually and, where practical, we would also expect half yearly or quarterly financial reports to be provided. Revenue budgets and budgets for capital expenditure should be included.

- **Financial audit reports**

- **Capital programme**

Information on major plans for capital expenditure including any private finance initiative and public private partnership contracts.

- **Financial regulations and procedures**
- **Staff allowances and expenses**

Details of the allowances and expenses that can be claimed or incurred. It should include the total of the allowances and expenses paid to individual senior staff members by reference to categories. The definition of "senior staff" is given below. These categories should be produced in line with the HEI's policies, practices and procedures and must at least include travel, subsistence and entertainment.

- **Staff pay and grading structures**

This may be provided as part of the organisational structure and should include, as a minimum, the salaries for senior staff, which, for the purpose of this document, means staff earning over £100,000 per annum and on the Senior Management Team or equivalent level. The salaries should be stated in bands of £10,000. For more junior posts, levels of pay should be identified by salary range.

The 'pay multiple' – the ratio between the highest paid salary and the median average salary of the whole of the HEI's workforce.

- **Register of suppliers**
- **Procurement and tender procedures and reports**

Details of procedures used for the acquisition of goods and services. Contracts available for public tender and reports of successful tenders.

- **Contracts**

We would normally only expect HEIs to publish details of contracts that exceed £25,000.

- **Research funding**

High level information about research funding from public sector sources and research funding from commercial sources where appropriate.

What our priorities are and how we are doing

Strategies and plans, performance indicators, audits, inspections and reviews.

We would expect information in this class to be available at least for the current and previous three years.

Below is a list of the type of information that we would expect HEIs to have readily available for publication. Any other reports or recorded information demonstrating the HEI's planned or actual performance should normally be included.

- **Annual report**
- **Corporate and business plans**
- **Teaching and learning strategy**
- **Academic quality and standards**
- **Privacy impact assessments (in full or summary format)**

Information, or a direct link to publicly available information, on the HEI's current internal procedures for assuring academic quality and standards and recent qualitative data on the quality and standards of learning and teaching.

- **External and internal audit; review information**

This will include information such as the annual monitoring and review process together with a statement of roles, responsibilities and authority of different bodies within the institution involved in programme approval and review.

- **Corporate relations**

Information relating to the HEI's links with employers and sponsors, in both the public and private sectors, and the development of learning programmes.

- **Government and regulatory reports**

For example, accreditation and monitoring reports by professional, statutory or regulatory bodies and information that an institution is legally obliged to make available to its funding and/or monitoring bodies. Where information provided to regulatory bodies is publicly available via those bodies, the HEI may instead provide a direct link to that information.

- **The HEI's compliance with its duties under the Equality Act 2010**

This includes any information produced as part of these duties.

How we make decisions

Decision making processes and records of decisions.

Minutes of formal meetings where key decisions are made about the operation of the HEI should be available. HEIs may decide not to publish particular minutes on a case by case basis. Information in this class should be available at least for the current and previous three years.

Information published will depend on the governance structure of HEIs, which can vary. Examples of this class of information include:

- **Agendas, officers' reports, background papers and minutes from governing body, Council / Senate, academic boards, steering groups and committees**
- **Teaching and learning committee minutes**
- **Minutes of staff / student consultation meetings**
- **Appointment committees and procedures**

Our policies and procedures

Current written protocols, policies and procedures for delivering our services and responsibilities.

We would expect information in this class to be current information only.

- **Policies and procedures for conducting HEI business**

Codes of practice, memoranda of understanding, procedural rules, standing orders and similar information should be included. Procedures for handling requests for information should be included. In Wales it will include the Welsh Language Scheme in accordance with the Welsh Language Act 1993, and in Northern Ireland the equality scheme/statement produced in accordance with section 75 of the Northern Ireland Act 1998.

- **Procedures and policies relating to academic services**

Some of these policies may already be covered in class 3 'What our priorities are and how we are doing' in the context of external review and academic quality and standards. Additional policies under this

heading may include such matters as policies and procedures relating to honorary degrees, procedures for changing course, regulations and policy on student assessment, appeal procedures and policy on breach of assessment regulations.

- **Procedures and policies relating to student services**

This will include relevant policies and procedures as they apply, for example, to student admission and registration, accommodation, management of the student records system, the assessment of external qualifications, internal student complaints and appeals, student support services and code of student discipline.

- **Procedures and policies relating to human resources**

This will include the full range of human resources policies and procedures such as generic terms and conditions of employment, collective bargaining and consultation with trade unions, grievance, disciplinary, harassment and bullying, public interest disclosure and staff development (such as induction, probation, appraisal, promotions).

A number of policies, such as equality duties and health and safety will cover both the provision of services and the employment of staff. Some of these policies may already be covered in class 3 'What our priorities are and how we are doing'.

- **Pay policy statement**

- **Procedures and policies relating to recruitment**

If vacancies are advertised as part of recruitment policies, details of current vacancies will be readily available.

- **Code of Conduct for members of governing bodies**

- **Equality and Diversity policies; Equality Scheme**

This will also include policies, statements, procedures and guidelines relating to equal opportunities.

- **Health and Safety**

- **Estate management**

This will include disposals policy, estates strategy and plan, facilities management policies, grounds and building maintenance.

- **Complaints policy**

Complaints procedures will include those covering requests for information and operating the publication scheme.

- **Records management and personal data policies**

This will include information security policies, records retention, destruction and archive policies, and data protection (including data sharing) policies.

- **Fileplans**

- **Research policy and strategy**

This will include quality assurance procedures, policy and procedures relating to intellectual property, ethics committee terms of reference, applications and their approval, and any other relevant codes of practice. It will also include policy, strategy and procedures relating to knowledge transfer and enterprise.

- **Publicly funded research outputs and data**

In line with the overall direction of travel towards greater transparency, we expect HEIs to progressively publish information on publicly funded research, or to provide a direct link to it. Where appropriate we recommend HEIs ask researchers to follow the Research Councils UK's Policy and Guidance on Access to Research Outputs. In future the "Gateway to Research", under development by Research Councils UK, will open up access to Research Council funded research information and related data outputs. It is hoped that this will be available by 2014. The ICO will keep the position under review.

- **Charging regimes and policies**

Details of any statutory charging regimes should be provided. Charging policies should include charges made for information routinely published and clearly state what costs are to be recovered together with the basis on which they are made and how they are calculated.

If the HEI charges a fee for licensing the re-use of datasets, it should state in its guide to information how this is calculated and whether the charge is made under the Re-use Fees Regulations or under other legislation. It cannot charge a re-use fee if it makes the

datasets available for re-use under the Open Government Licence.

Lists and registers

We expect this to be information contained only in currently maintained lists and registers.

- **Any information we are currently legally required to hold in publicly available registers**
- **Asset registers**
- **Information asset register**

We would not expect HEIs to publish all details from all asset registers. We would, however, expect the location of public land and building assets and key attribute information that is normally recorded on an asset register to be available, along with some other information from capital asset registers.

- **CCTV**

Details of the locations of any overt CCTV surveillance cameras operated by or on behalf of the HEI. The HEI should decide on the level of detail which is appropriate. This could be by building, campus area or more general geographic locations e.g. postcodes or partial postcodes, depending on the security issues raised.

- **Disclosure logs**

Where an HEI produces a disclosure log indicating the information that has been provided in response to requests, it should be readily available. Disclosure logs are themselves recommended as good practice.

- **Any register of interests kept in the HEI.**
- **Register of gifts and hospitality provided to senior staff**

This should include details of gifts given or received; details of any hospitality afforded and by which organisation. The definition of "senior staff" is as stated above.

- **Senior staff's declaration of interests**

This should include the names, faculties, departments and job titles of all senior staff who have made entries. Any information recorded in the 'professional' element of the register should also be disclosed subject to the redaction of, for example, home address, or any third

party personal data or sensitive personal data.

The services we offer

Information about the services we offer, including leaflets, guidance and newsletters.

Generally this is an extension of part of the first class of information. While the first class provides information on the roles and responsibilities of the HEI, this class includes details of the services which are provided by the HEI, internationally, nationally and locally as a result of them. It will also relate to information covered in other classes. Examples of other services that could be included are:

- **Prospectus**
- **Services for outside bodies**
- **Course content**
- **Course fees**
- **Funding, such as grants and bursaries, available to students from the HEI**
- **Services for which the HEI is entitled to recover a fee together with those fees**
- **Welfare and counselling services**
- **Health including medical services**
- **Careers**
- **Chaplaincy services**
- **Sports and recreational facilities**
- **Facilities relating to music, art and other cultural activities**
- **Museums, libraries, special collections and archives**

It is expected that this will include guides to collections and scope and availability of catalogues. (Further guidance is available in that provided for bodies responsible for managing museums, collections and archives.)

- **Conference facilities**
- **Advice and guidance**
- **Media releases**

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 August 2013

Public Authority: The Cabinet Office
Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant has requested CCTV footage from cameras on Whitehall which showed Andrew Mitchell MP attempting to leave Downing Street on his bicycle by the main gate in September 2012. The Cabinet Office originally refused to provide it citing section 40 (unfair disclosure of personal data) as its basis for doing so. During the Commissioner's investigation it changed its position and argued that the footage was exempt under section 31 (prejudice to law enforcement) because the matter had become the subject of an investigation by the Metropolitan Police. It argued that the public interest favoured maintaining this exemption.
2. The Commissioner's decision is that the Cabinet Office is entitled to rely on section 31 as a basis for withholding the requested information. However, he has concluded that the Cabinet Office contravened section 10(1) and section 17 of the FOIA in failing to provide a refusal notice within 20 working days.
3. No steps are required.

Request and response

4. On 23 December 2012, the complainant requested information of the following description:

"I write to ask for a copy of the footage of Mr Andrew Mitchell, the former Chief Whip, taken from Whitehall and showing him leaving Downing Street on the evening of September 19 this year or a link to where that footage is online. Specifically, I request footage from the period 19:35 to 19:40 from all available angles on Whitehall.

5. Please note that I request a copy of the footage unedited - and with the timecode properly and full visible - and not deliberately obscured as was the case in the Channel Four News broadcast."
6. On 6 February 2013, the Cabinet Office responded. It refused to provide the requested information. It cited the FOIA exemption at section 40(2) – Unfair disclosure of personal data – as its basis for doing so.
7. The complainant requested an internal review on 7 February 2013. The Cabinet Office sent him the outcome of its internal review on 7 March 2013. It upheld its original position and explained that an unedited version of the footage would show individuals unconnected with the incident and disclosure would be unfair to those individuals.

Scope of the case

8. The complainant contacted the Commissioner on 10 March 2013 to complain about the way his request for information had been handled.
9. He explained to the Commissioner that he now agreed to accept footage with images of individuals unconnected with the incident pixelated such that their identities were obscured. This appeared to remove the barrier to disclosure that the Cabinet Office had initially raised.
10. The Commissioner sought the Cabinet Office's view on this proposal for informal resolution of the matter on 14 May 2013. After considerable delay on the Cabinet Office's part during which time no further arguments against disclosure were provided to the Commissioner, a representative of the Commissioner viewed the footage on 23 July 2013. The Cabinet Office then provided its arguments against disclosure of any of the footage on 31 July 2013. It now argued that the footage was exempt under section 31(1)(a), (b) and (c). It explained that this was "on the basis of ongoing investigations by the Metropolitan Police and the Crown Prosecution Service". It also explained that it was applying this exemption in relation to both pixelated and unpixelated footage.
11. It should be noted that the Cabinet Office interpreted the request broadly. It included within the scope of the request footage taken from cameras that cover both Whitehall and Downing Street and not "footage ...from Whitehall" as stated in the request.
12. The Commissioner has therefore considered whether the Cabinet Office is entitled to rely on the provisions of section 31 that it has cited as a basis for withholding the requested information.

13. The Commissioner has also looked at whether the Cabinet Office complied with its procedural obligations under the Act in respect of the time it took to respond to the complainant's request.

Reasons for decision

Section 31(1)(a)

14. Information which is not exempt from disclosure by virtue of section 30 is exempt on the basis of section 31(1)(a) if its disclosure would, or would be likely to, prejudice the prevention or detection of crime.
15. Section 31(1)(a) is a prejudice based exemption. This means that in order to engage the exemption, there must be likelihood that disclosure would cause prejudice to the interest that the exemption protects. In the Commissioner's view, three criteria must be met in order to engage a prejudice based exemption:
- Firstly, the actual harm which the public authority alleges would, or would be likely, to occur if the disputed information was disclosed must relate to the applicable interests within the relevant exemption;
 - secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the disputed information and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and
 - thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – i.e. disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice. In relation to the lower threshold (would be likely), the Commissioner believes that the chance of prejudice occurring must be more than a hypothetical possibility; rather there must be a real and significant risk. The Commissioner considers that the higher threshold places a stronger evidential burden on a public authority to discharge. The chances of the prejudice occurring should be more probable than not.

16. In support of its reliance on section 31, the Cabinet Office explained that the footage was being considered as part of "ongoing investigations by the Metropolitan Police Service and the Crown Prosecution Service".¹
17. Regarding the first criterion, the Commissioner is satisfied that the harm envisaged by the CPS is one which section 31(1)(a) is designed to avoid. It relates to the applicable interest in the relevant exemption. He is satisfied that there is an ongoing investigation and notes coverage of this in the media.²
18. Regarding the second criterion, the Commissioner considered the withheld information. He is satisfied that it covers events which are currently the subject of an ongoing police investigation.
19. Regarding the third criterion, the CPS did not specify which level of prejudice it was seeking to argue. The Commissioner has therefore considered the lower level of "likely" prejudice. He has considered the information and has concluded that the prejudicial outcome described in the exemption would be likely where the information were to be disclosed. If the footage were to be made publicly available at this stage of the investigation, the Commissioner can see how witnesses to events or those against whom wrongdoing is alleged could alter their testimony to match the footage. It is important for any investigation that witnesses provide statements and testimony according to their own recollection and not to match other evidence which they know to be available to the police.
20. The Commissioner also notes that certain parts of the requested footage have been put into the public domain and were broadcast by Channel 4 News. This is referred to in the complainant's request.³ However, the footage put into the public domain did not show the exact time that events took place. The complainant has specifically requested footage with the "timecode properly and full visible". In considering disclosure of footage that is already in the public domain, the Commissioner has considered whether the footage plus the time information should be disclosed because this is what the complainant specifically requested.

¹ There had been two arrests in December prior to the date of the request
<http://www.itv.com/news/update/2012-12-20/man-arrested-as-part-of-downing-street-inquiry-into-mitchell-incident/>

² <http://www.bbc.co.uk/news/uk-politics-23170959>

³ <http://www.channel4.com/news/andrew-mitchell>

21. In light of the above, the Commissioner is therefore satisfied the withheld information is exempt information under section 31(1)(a). He agrees that disclosure would be likely to prejudice the prevention or detection of crime.
22. By virtue of the effect of section 2(2)(b), exempt information must be disclosed if, in all the circumstances of the case, the public interest in maintaining the applicable exemption does not outweigh the public interest in disclosure.

Public interest factors favouring disclosure

23. The Cabinet Office recognised a general public interest in transparency and accountability but did not consider that this added sufficient weight to the public interest in disclosure.
24. The events covered in the footage have been the subject of considerable coverage in the media (see example at Note 1). Shortly after the events recorded in the requested footage, there was an allegation made against Andrew Mitchell MP (at the time he was the newly appointed Government Chief Whip). It was alleged that he had used a derogatory term against officers who had refused to allow him to exit Downing Street on his bicycle via the main gate. Mr Mitchell admitted swearing and apologised for doing so but denied that he had used a derogatory term against officers. After considerable public furore, during which Mr Mitchell consistently denied using the derogatory term in question, he resigned as Chief Whip. Subsequently, questions were raised as to veracity of the allegation that he had used a derogatory term during the incident. At the time of writing this decision notice, the matter had become the subject of a police investigation and individuals have been arrested.
25. The events in question have had (and continue to have) sensitive and complex consequences. A number of individuals have been directly and adversely affected by what has happened. The furore referred to above initially lead to suggestions that senior public figures did not have sufficient respect for Crown servants such as the police and for other public servants. The subsequent investigation into the veracity of the allegations against Mr Mitchell have, in turn, led to doubts about other individuals in whom considerable public trust has been vested. There is considerable public interest in obtaining a clearer picture of what happened and whether there has been any wrong doing in public office by any party. Disclosure of the footage would provide a piece of the puzzle that would allow the public to learn more about the events.

Public interest factors against disclosure

26. The Cabinet Office set out the following arguments against disclosure:
"Disclosure of the information held could prejudice the investigation into the conduct of certain individuals ... it is clearly in the public interest, where investigations are ongoing, to allow those investigations to take their course and conclude without interference or pressure caused by premature release of information subject to those investigations."

Balance of the public interest

27. As noted above, the Commissioner must consider the circumstances of each case when reaching a view as to the balance of public interest. He recognises that routine disclosure of material that has become the subject of a police investigation would clearly have a negative impact on the conduct of criminal investigations to the obvious detriment of the public interest. However, the subject matter in this case, alleged wrongdoing by individuals in public service or in public office not only attracts considerable public attention but has also given rise to a loss of trust in those in public office or those undertaking public service. This would seem like a compelling argument in favour of transparency of available evidence (such as the requested information) in order to aid in the rebuilding of trust.
28. However, the Commissioner is firmly of the view that the investigation should be allowed to proceed unhindered by the disclosure of part of the evidence being considered as part of that investigation. While he accepts that the public may be very interested to see what the footage shows, this does not mean that the public interest would be best served by such disclosure while an investigation is ongoing.
29. Although the public is entitled to expect the highest standards of probity from those in public service and in public office, the public is also entitled to expect that allegations of wrongdoing by those in public service and public office are fully investigated and that those investigations are not hampered in any way.
30. In light of the above, the Commissioner is therefore satisfied that on balance, the public interest in maintain section 31(1)(a) outweighs the public interest in disclosing the requested information. In reaching this view, he has given particular weight to the fact that an investigation is ongoing. He has also given weight to the seriousness of the allegations that are under investigation.
31. The Commissioner has not considered whether sections 31(1)(b) and 31(1)(c) are applicable because he is already satisfied that the information is exempt under section 31(1)(a) and that the public interest favours maintaining this exemption.

Section 10(1) and section 17(1)

32. Section 10(1) of the FOIA requires that a public authority complies with section 1(1) promptly and in any event not later than 20 working days following the date that a request was received. If public authority is seeking to rely on an exemption to refuse to comply with a request then, in line with section 17(1), it must provide the requestor with a refusal notice, within 20 working days, stating which exemption(s) is being relied upon. It can extend the deadline for response where it is considering the balance of public interest test but it must first tell the complainant within 20 working days which exemption it is seeking to rely on.
33. By the Commissioner's calculation, it took 37 working days for the Cabinet Office to tell the complainant that it was seeking to rely on section 40(2) although it later withdrew reliance on this exemption.
34. In failing to comply with section 1(1) within 20 working days of the request, the Cabinet Office contravened the requirements of section 10(1) of the FOIA. In failing to cite which exemption it was seeking to rely on within 20 working days, the Cabinet Office contravened the requirements of section 17(1) of the FOIA.

Right of appeal

35. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

36. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
37. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Graham Smith
Deputy Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF