

FOIA and EIR Foundation Training Module 1: FOIA procedural basics



They should all have attended the Introduction to FOI course.

Should have the objectives and timetable in front of them.

There will be 5 further modules after this one.

Mention that they should consider working through the **FOI workbook** with their mentor / manager.

Can you remember...?

1. What is the FOIA for?
2. What are the two key obligations on public authorities?
3. Give some examples of public authorities.
4. What types of information may be covered?
5. What is the standard time for compliance?
6. What is meant by "absolute" and "qualified" exemptions?

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Review from Intro to FOI

Note: the "two obligations" as taught in Intro are requests and publication schemes (not 1(1)(a) and 1(1)(b) which they may not be familiar with)

****Reassure that doesn't matter if they don't know, as this will be covered – it's more to check where people are up to.**

FOIA Part I

s.1 Right of access to information

1(1) Any person making a request for information to a public authority is entitled—

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.

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Today looking at part 1 – procedural aspects of handling a request. Not looking at exemptions or at publication schemes. Also not covering costs, fees and vexatious requests – these will be the subject of the completely separate module 4, later on.

All relates to section 1 which has two parts.

Note: “any person” includes ‘legal persons’ e.g. companies, authorities etc.

FOIA Part I

s1 – right of access

s8 – requests

Procedural requirements:

s10 – time limits

s11 – means of communication

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Some procedural requirements for handling requests.
This will be first half of session. Refusal notices in
second half.

FOIA Part I

s17 – refusal notice

s16 – advice and assistance

s45 / 46 – codes of practice

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Will also be looking at refusal notices, advice and assistance and good practice.

The ones we've missed out are re. what is a public authority – have covered this previously – and s.15 historical public records. Not irrelevant, but not for today.

Requests for information (s.8)

8(1) In this Act any reference to a “request for information” is a reference to such a request which—

- (a) is in writing,
- (b) states the name of the applicant and an address for correspondence, and
- (c) describes the information requested.

Please see ICO guidance : **Recognising a request under FOIA.**

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First bit is obvious and / or dealt with in awareness session.

Note: although it mentions name and address, that doesn't necessarily mean one letter = one request. Sometimes a letter may contain *multiple* requests; this is only really relevant when we come on to cost limits later.

Key here is “describes the information”

NB requests made by social media such as twitter may be valid

Requests for information?

"Can you explain please why you are changing your home working policy?"

"Please send me the minutes of the management board meeting of 28 June"

"Please send me the minutes of your last meeting."

"I am interested in finding out more about the history of the area. I hope you will be able to help me."

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1. Easy. It clearly is requesting information ("please send me") and describes what is wanted ("minutes of 28 June"). There's no ambiguity. Described by reference to documents but clearly means content (explanatory notes)
2. What do they think? Answer – yes, it is a valid request. The fact that it's phrased as a question is irrelevant – the request is for "the reasons why the PA is changing its home-working policy".
3. What do they think? Answer – it doesn't either request or describe, so it's not valid. An example of requesting information but not describing it at all would be rare – perhaps "please send me the information"! Note: is still a duty to provide advice / assistance to someone trying to make request.
4. What do they think? Answer – valid but may be unclear. Is it the last meeting that has taken place within the authority (which may be a small team meeting) or the last meeting of the board, or what?

V. important to determine scope before investigating.

Interpreting a request

Requests must be interpreted **objectively**

"all informations about the last three months of declared Premium Bond Winners... I will accept bank statements". (*Meunier EA/2006/0059*)

"What action has been taken as regards each of these instances of failed standards..." (*Barber, EA/2005/0004*)

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Objectively: should not be guessing what the person might want. Generally read request in isolation except if clearly must be read in light of previous correspondence.

Meunier: the authority (National Savings and Investments) *assumed* he meant personal data of the winners including their private bank statements. In fact he wanted proof that payments had been made out of the NS&I bank account. The objective interpretation could be extremely wide ('all information')

Barber: the authority (HMRC) said it didn't hold information because it didn't accept that the things listed were 'failed standards' but the Tribunal found it was obvious that was what he was referring to.

Check they know that EA ref = IT decision (now known as First Tier Tribunal).

Unclear requests (s.1(3))

“1(3) Where a public authority—

- (a) reasonably requires further information in order to identify and locate the information requested, and
- (b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.”

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The way of solving this problem.

Note that it is “reasonably required” – i.e. not just “would like” but not necessarily “essential”

Sometimes the authority will have failed to go back to the requester when they should have.

This does NOT mean you can't talk to the applicant, check your understanding etc. in any circumstances (in fact it's good if you do) just that it won't affect the time you have in which to comply

Note that authorities will often attempt to answer unclear requests without seeking clarification which leads to other problems.

Unclear requests

- May be based on false assumption/misunderstanding
- Jargon or terminology interpreted differently
- The request may have changed during correspondence between the PA and the requester

How case officer should approach:

- Does the PA have a different understanding of the request from the requester?
- Is the requester's intended meaning an objective reading of the request?



These are some of the reasons there may be differences.

[click]

In practice authority will often have failed to seek clarification where required.

Things to be aware of are:

-You must work to an objective reading of the request; don't allow yourself (e.g. during informal resolution) to let the request take on a wider understanding. It will not be enforceable if it isn't part of the request.

-Be aware that both sides may have been vague or allowed it to become rephrased over time

Where there are two different understandings, go with the requester's *if it is objective* from the point of view of 1(1) [it gets complicated around s.16 – will discuss later]

Where there is no disagreement, go with the agreed understanding even if you think there is another objective reading of the request – there is no point making things more confusing!

[emphasise need to have decided on reading *in order to find* s.1 and

s.16 breaches]

Time for compliance (s.10)



If the authority has tothe clock
doesn't start until this is received (10(6)(b))

If the authority the clock stops
and then starts again

If the authority
it does not have to disclose info (if disclosable) until
"such time as is reasonable in the circumstances"

Initial response always within 20 days / standard time

Also variations to standard time in time regs

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This is for the handout version of the slides.

Time for compliance (s.10)



If the authority has to ~~ask for clarification~~...the clock doesn't start until this is received (10(6)(b))

If the authority ~~issues a fees notice~~ the clock stops and then starts again ~~after the fee is received~~....

If the authority ~~needs to carry out a public interest test~~ it does not have to disclose info (if disclosable) until "such time as is reasonable in the circumstances"

Initial response always within 20 days / standard time

Also variations to standard time in time regs

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What are the three things that affect time? (They should know two; if been to Intro might know all three). The "if disclosable" might give a clue to the third one?

Explain that the 20 days *doesn't start* until you receive the clarification – although of course this only applies if you have asked.

Emphasise that there are three different things:

- the clock *doesn't start*, or rather starts again – so you have 20 days to ask for the clarification (though should do so as promptly as possible) and *another* 20 days once received [however may not be breach of s.10] Hence often refer to as "new request"
- the clock is *paused* so that both the time before and the time after are counted
- the time is *extended*, or rather, you have an additional extension of time. Again, you still only have 20 days for your initial response. [Covered in detail in just a mo]

Hand out / refer to (if in handout) "time for compliance" regs which are exceptions / variations to 20 days. Remind them about schools (which is in awareness) inc that NI schools and academies are same now.

Means of communication

“1(1) Any person making a request for information to a public authority is entitled ...

(b) ... to have that information communicated to him.”

“11(4) Subject to subsection (1), a public authority may comply with a request by communicating information by any means which are reasonable in the circumstances.”

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Moving on to how to comply with request

The duty is to “communicate” information

Generally whether something's been communicated is not in issue. Usually it's either sent in the post or by email.

[click] So clearly you take in to account what would be reasonable – if the request was sent in by email, then you assume they can receive the information by email back.

But if the information is held (like for e.g. on the DUIS – now ICE - system) in some kind of format which most people wouldn't be able to read, then attaching these unopenable files wouldn't be reasonable.

Note: unlike DP, no requirement to explain abbreviations, codes or technical information.

Datasets : s11 has been amended to include new s11(1A); there is also new s11(5) datasets definition and various ensuing amendments. Where request includes preference for info in electronic form, PA must make the information available in electronic form that is capable of

reuse (no change to info that must be disclosed)

Means of communication

“1(1) Any person making a request for information to a public authority is entitled ...

(b) ... to have that information communicated to him.”

11(1) Applicant may specify preferred means of communication.

11(2) is it reasonably practicable to communicate by particular means?

11(3) If a PA cannot comply, should say why.

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[click] (read what it says). Reasonably practicable is a bit stronger than “convenient” – you do have to do what you can to comply – but it’s less than “at all possible” – if it would be theoretically possible but prohibitively time-consuming. (You do only have 20 days).

Means of communication

“11(1) ...on making his request for information, the applicant expresses a preference for communication by any one or more of the following means, namely—”

- copy of the information in permanent form or in another form acceptable to the applicant
- reasonable opportunity to inspect a record containing the information
- digest or summary of the information

See our guidance : **Means of communicating information**



Means of communication: can ask for it in electronic, printed, audio etc. form.

Our line had formerly been that a requester could not specify software format (eg Excel, Word) but in the **Innes** Court of Appeal decision Sept 2014 the court held that a requester can specify electronic format. This decision is binding on the ICO. We have amended our guidance to reflect it.

Can ask to see info in person – note distinction between records and information. ASK why they think people might wish to do this. [e.g. information voluminous and / or they might be charged] ALSO NOTE: can raise issues re. **redaction** / security of other info.

Digest or summary bit odd – not really receiving all the info. Most likely if they have asked for certain quite lengthy documents or entire files.

One or more. So e.g. see it all and have a copy of some of it. BUT must say that *at the time they make the request*, strictly. So if they asked to see it and then after seeing it asked for a copy, that would be a new request. [But as good practice don't refuse as repeated]

As a matter of good practice, if someone hasn't specified how they want the information it's a good idea to discuss it with them, especially where having it in hard copy would attract a charge.



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Coffee break

Refusing a request

Can refuse a request if:

- it would cost too much to comply (s.12)
- request is vexatious or repeated (s.14)
- information is exempt
- Exemptions may be ABSOLUTE or QUALIFIED
- Qualified exemptions are subject to a public interest test



Going on to how to refuse a request

This slide just to re-cap on when it can be refused. We will be looking at s.12 and s.14 and exemptions in later modules.

Refusal notice s.17



In writing within 20 working days:

- Exemption including subsection
- Reasons why
- Details of how to complain to authority ("internal review") or state that this is not available
- Right to complain to ICO

If no exclusion from 1(1)(a) still need to confirm that information is held.

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The refusal notice should specify the exemption they're relying on. So:

- They should include the section and subsection – note that all these provisions (s.10, s.17 etc) have subsections and if we find procedural breaches in DNs we have to be careful to cite them properly. (However current practice is not to focus on procedural breaches). We're not going into that today because it actually gets very complicated and you don't need to know it at this point. Detail is in LTT29.
- Reasons why *unless would reveal info*
- How to complain to the authority (if there is such provision) or that there is no IR; and how to complain to ICO.

Internal review is their "second chance" to fix breaches

⇒ Show them a good refusal notice (in handouts) and get them to identify all the bits.

Note: mostly 17(1), but for procedural "exemptions" (12 and 14) see s.17(5).

Refusal notice s.17

20 working days

“17(1) A public authority which ... is to any extent relying on a claim that ... information is exempt information must, within the time for complying with section 1(1), give the applicant a notice”

- ~~What they choose is not every~~ s.17 not section 10
- ~~possible exemption~~ PIT either in first refusal notice or separately
- BUT must respond within 20 working days and give estimate for final response

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-They only need to do this for exemptions they're relying on. They **don't have to identify every exemption** which might apply, so long as they have identified exemptions to cover everything they're withholding. There is also provision for not giving full explanation if this would reveal exempt info.

-**They are not in breach for choosing wrong exemptions** only for failing to say which they think apply and why

-Timing: s.10 is time for “compliance” not time for “response”. So a late refusal notice is a breach of s.17, not s.10. (This doesn't mean there can't be a breach of s.10 when they've refused – they could have refused wrongly)

-So if they are considering the PIT they have extra time under s.10 to disclose it if it should be disclosed and **ALSO** under s.17 they get extra time to give the outcome of the PIT if they are refusing it

-However they still need to give a notice if they are going to extend the time

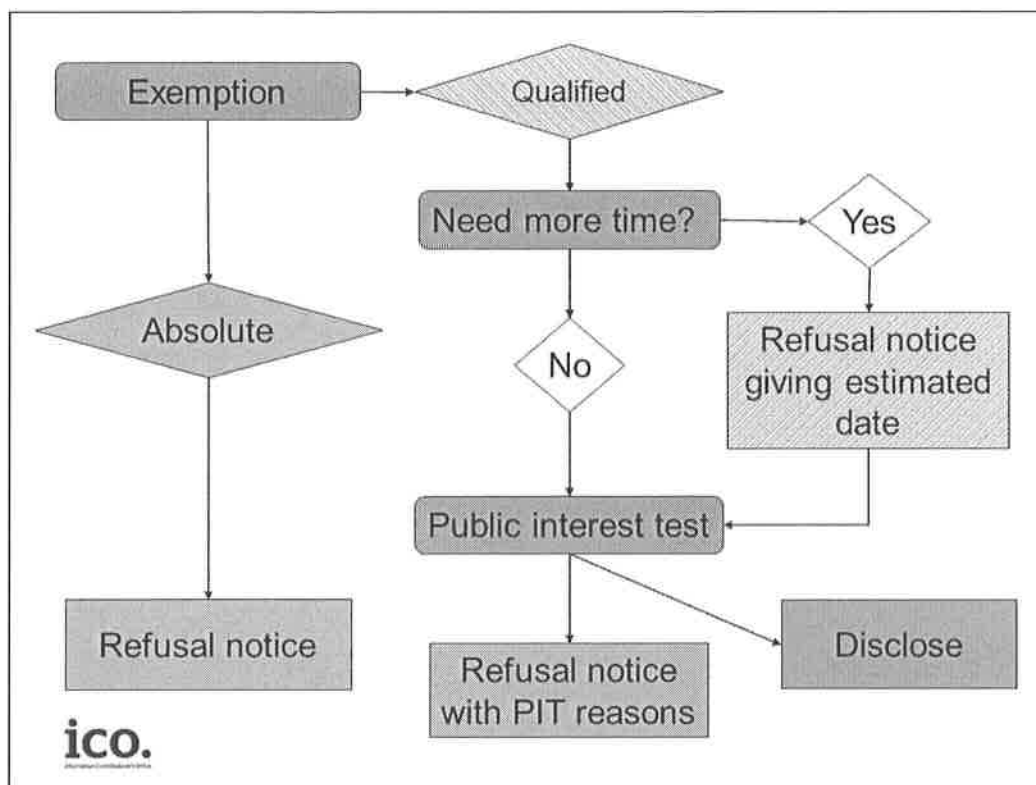
Refusal notice s.17

“17(1) A public authority which ... is to any extent relying on a claim that ... information is exempt information must, within the time for complying with section 1(1), give the applicant a notice”

- Late refusal notice is breach of s.17 not section 10
- PIT either in first refusal notice or separately
- BUT must respond within 20 working days and give estimate for final response



Handout version of slide.



Important: the refusal notice extending the time **MUST STILL CITE EXEMPTIONS**. It should cite the qualified exemptions where the PIT is still being considered.

The extra time must **NOT** be used for deciding whether an exemption (absolute or qualified) applies.

In practice you may have a situation where some information is released immediately, some is withheld under an absolute exemption, and some is withheld pending a public interest test.

Example

1 March 2011: Mr Smith makes a request to Dorsetshire County Council for "the paper on library funding presented to the Council on 20 Feb"

18 March 2011: Council confirms the info is held, but refuses to disclose it. It explains which exemption it is claiming and why, offers internal review and ICO

25 April 2011: Council confirms its original decision

6 June 2011: ICO finds the information is not exempt.

s10? **BREACH: should have disclosed within 20 working days**

s17? **COMPLIED:** explained reasons in time



(not going massively into breaches and subsections)

**s.10 refers to the TIME FOR COMPLIANCE not the "time for response". We're coming on to refusing a request; where the request has been CORRECTLY refused, s.10 doesn't apply because there was never any duty to disclose information

Then another one verbally: The information is exempt and the authority has correctly cited exemptions. However the refusal notice was late.

Note with the second one – deliberately avoiding getting into detail. Do not discuss s1 breaches here. Someone could ask (a) is there a breach of 1(1)(a)? (b) something about the content of the refusal notice or (c) before or after

the IR.

Note:

LTTs 29 and 187 cover procedural breaches in detail but we no longer go into that much detail when drafting a DN on a complaint.

Example

1 March 2011: Mr Smith makes a request to Borsetshire County Council for "the paper on library funding presented to the Council on 20 Feb"

18 March 2011: Council confirms the info is held, but refuses to disclose it. It explains which exemption it is claiming and why, and offers an internal review.

25 April 2011: Council confirms its original decision

6 June 2011: ICO finds the information is not exempt.

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Handout version

Knowledge review

1. What provision is made in FOIA when the authority is unsure what the request means?
2. What circumstances may affect the time limit for compliance?
3. What is required in a refusal notice?
4. When would you find a breach of s.10?
5. Explain the right to express a preference about how information is made available.

Advice and assistance (s.16)

16(1) It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.

(2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.

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There is a general duty to provide advice and assistance.

[click] However, only in so far as is reasonable. This is a matter of judgement, but if they comply with the s.45 code then they have complied with s.16.

s.45 Code of Practice

Section 45 of FOIA: Secretary of State's guidance to public authorities as to good practice to follow when carrying out their functions under FOIA



Give out a few copies of s45 and s46 Codes for delegates to see (collect copies in at end and return them to training folder).

Do you remember from the Introduction to FOI course what the s45 and s46 Codes were? 2 Codes of Practice to help PAs.

S45 Code only applies to FOIA (reg 16 under EIR) (s46 Code applies to both EIR and FOIA)

The most up-to-date Code of Practice is dated July 2018.

The first chapter defines the individual's right of access – talks about whether the information is held, what makes a valid request, fees and the means of communication.

s.45 Code of Practice: the duty to provide advice and assistance -

1. before the person makes a request
2. when clarifying an unclear request
3. reducing the cost of a request
4. transferring requests for information

See also chapter 6 cost limit - refusing a request under s.12

- Has the PA followed the good practice in the code?
- If not, is there a good reason why it wouldn't be reasonable to expect it in this case?



Chapter 2 covers the duty to provide advice and assistance. It is limited to these circumstances - see slide

1. Generally the first one won't come up in cases since we only look at how an FOI request was handled. But a PA should:
 - ensure that it is easy to make a request;
 - make people aware of their FOI right;
 - advise individuals who have perhaps made a request over the phone to put it in writing.
2. Clarification - not a breach of s16 PA didn't realise request was unclear because more than one objective reading.
3. Reducing the cost - advice and assistance must be useful. Usually include estimate / explanation what makes it go over limit. If can't be narrowed should say. See chapter 6.
4. When the PA does not hold the information but knows which PA does.

[click] code may inc. suggestions / non-exhaustive. Judgement – are there steps in the code which the authority should reasonably have taken and didn't?

BUT don't let authority get away with "it wouldn't have helped" type arguments with respect to costs – often based on assumptions about what requester wants rather than giving them genuine choice. Should SAY if no possibility . Please see recent guidance: **Requests where the cost of compliance exceeds the appropriate limit.**

s.45 Code of Practice: other good practice

In relation to requests:

- consulting third parties who may be affected by disclosure
- time limits for responding to requests
- complaints / internal review procedure
- what to consider regarding vexatious requests

General good practice:

- publication schemes
- transparency and confidentiality obligations in contracts and outsourced services
- communicating with a requester
- datasets – disclosure and re-use



In relation to requests

These are other areas which may come up in a case and raise good practice issues.

These aspects are not legal obligations but poor practice may be referred to Enforcement. (“Other matters” in a DN)

General good practice

[click] The code also covers some general areas: see list on slide.

s.46 Code of Practice: records management

- Guidance on records management policy
- Code supplements FOIA and helps authorities to comply with their duties under FOIA
- "Freedom of information legislation is only as good as the quality of the records and other information to which it provides access."
- Failure to apply the s46 Code is not in itself a breach of FOIA (and EIR) but following it will help authorities to comply with FOIA (and EIR)

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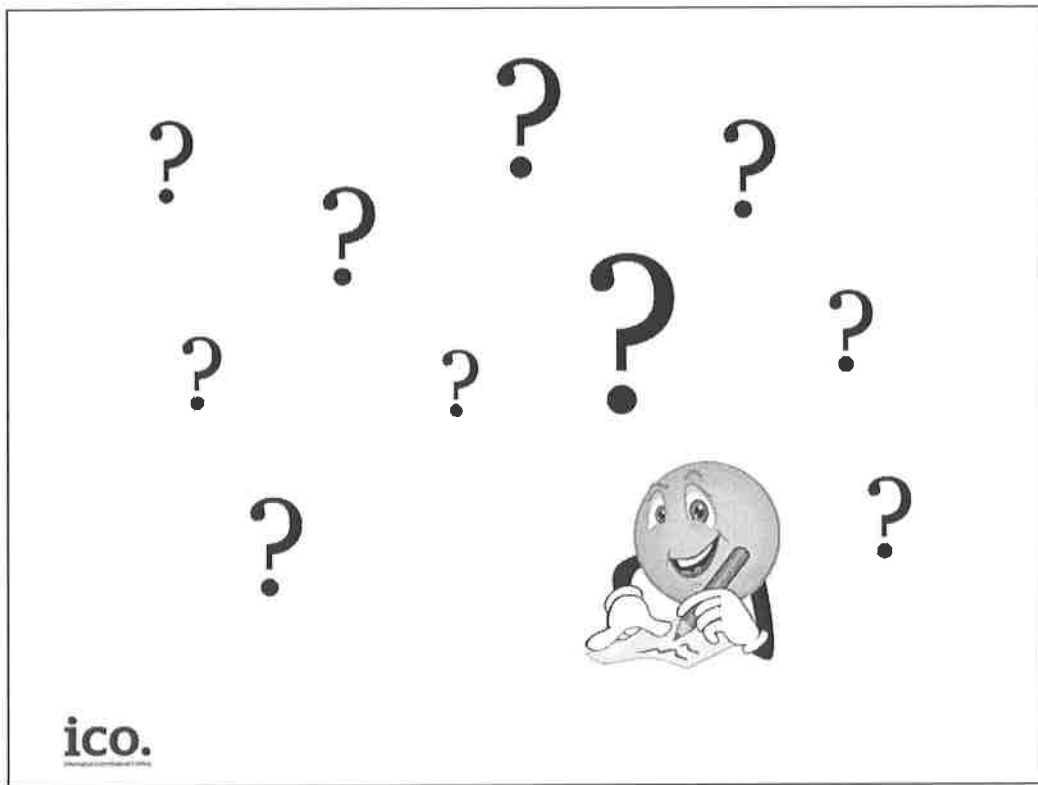
Final slide before quiz refers to the second Code of Practice.

Quote is from Foreword to s46 Code

Code is issued by Lord Chancellor: in practice The National Archives takes the lead.

S46 Code applies to EIR as well as FOIA.

Records management policy includes guidance on records management policy inc how long to keep records, storage, document disposal (inc where records subject to a FOIA exemption), planning and staff training.



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

For more information, see our
guidance page on www.ico.org.uk
and the FOI Policy knowledge base
on ICON

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Content	Objectives (what learner should be able to do)	Approximate timings
Introduction s1(1)(a) & (b)	Recall basic knowledge from Introduction to FOI. Also for trainer to establish existing level of knowledge. Be aware that s.1(1) has two parts. Start to see the distinction between Parts I and II of the Act.	Up to 10 minutes
Interpreting a request		
section 8, section 1(3)	Recognise that questions can be requests Be alert to the importance of correctly interpreting / scoping the request Explain the provision for clarification at 1(3), and be aware of how this differs (re time limit) from simply confirming with the requester that the understanding is correct.	15 minutes
Time limits and procedural breaches		
s.10 The Freedom of Information (Time for Compliance with Request) Regulations [SI 2004/3364 2009/1369]	Recall the standard time for compliance Be aware of the circumstances which may affect time for compliance and distinguish between them	15 minutes
Means of communication		
s.11	Recognise a s.11 preference within a request Be aware of the limits of this right	15 minutes
Tea / coffee break 15 minutes		

Procedural breaches continued		
s.17	Identify whether a refusal notice complies with s.17. Correctly distinguish between breaches of s.10 and s.17	15 minutes
Advice and Assistance and Codes of practice		
s.16	Recall the circumstances in which this duty arises and the limitations on it	20 minutes
s.45, s.46	Understand the status of the s.45 code Be aware of the areas which may raise issues of conformity with the codes	
Quiz – 15 minutes		

FOI Module 1: Procedural Basics

Trainer's Checklist

This is a 2 hour session.

NB L&D should have asked delegates to bring a copy of FOIA with them (their own, borrowed or printed off from legislation.gov.uk)

The handout pack for each attendee should contain one copy each of the following documents, which are all on Meridio 1.17.04.03:

- Objectives and timetable
- Slides - when printing handout:
 1. select the "handouts" option, 3 slides per sheet.
 2. Uncheck the "Print hidden slides" box.
 3. When printing, please "un-hide" the slides that will be hidden during the slideshow. These are currently: slide nos 11, 20, 23. The delegates do need to have these printed on their handout.
 4. Instead, please "hide" the following slides temporarily when printing the handout: slide nos 16, 19, 22. Please ensure the "Print hidden slides" box is not ticked for this purpose. This ensures that the delegates do not have answers and unnecessary items on their handout- these slides will only be viewed during the training session.
 5. **Please remember to change them back and instead hide slides 11, 20 and 23 again when you've finished printing.**
- Quiz.
- Time for Compliance regulations – two sets: 2004 and 2010.
- Refusal notice (sample).
- Feedback form – provided by Learning and Development – unless feedback is to be sought electronically.

The trainer will need:

- Signature sheet – provided by learning and Development
- Lesson plan.
- Slides – print out a copy with the speaker notes on, using the "Notes pages" option. These are also the slides to show on the screen. Please choose the "print hidden slides" option.
- Quiz with answers.
- Section 45 and section 46 Code of Practice.
- Flipchart – these come as standard in training suites

- A few copies of the following for delegates to look at during the session. These should be given out and collected in at the end (return them to the training folder):
 - Section 45 Code of Practice
 - Section 46 Code of Practice.

Materials in training cupboard

The training materials are in a labelled folder, in cupboard PD2 which is behind Lisa Atkinson and Viv Adams in Policy Delivery, First Floor West Wing.

Module 1: Procedural Basics

Objectives and timetable

This session covers the procedural provisions of the Freedom of Information Act 2000 (FOIA) which can be found in Part 1. Before attending this session, you should have attended the Introduction to FOI training.

By the end of this session, you should be able to:

- recognise a valid request for information
- describe how an authority should handle an unclear or ambiguous request
- recognise when a requester has expressed a preference for information to be provided by particular means or in a particular format
- recall the time limits for compliance with a request in different circumstances
- describe what is required in a valid refusal notice
- recall the circumstances in which the authority has a duty to provide advice and assistance to the requester
- recall the other areas which are covered by the s.45 Code of Practice
- understand how the section 46 Code of Practice sets out good practice for records management.

Schedule for today

Introduction

Handling a request:

- Interpreting a request
- Time limits
- Means of communication

Break – 15 minutes

Refusing a request

Codes of practice

Quiz

Resources

The key documents which will be referred to today are:

FOIA The Freedom of Information Act 2000

Time for compliance regs The Freedom of Information (Time for Compliance with Request) Regulations 2004 (SI 2004/3364) and 2010 (SI 2010/2768)

s.45 Code Code of Practice on the discharge of public authorities' functions under Part I of the Freedom of Information Act 2000, issued under section 45 of the Act

s.46 Code Lord Chancellor's Code of Practice on the management of records issued under section 46 of the Freedom of Information Act 2000.
Note: the current version was issued in 2009.

You can also follow up today's points on the **Policy Knowledge Base**.

REFUSAL NOTICE (sample)

Dear Mr Jones

Thank you for your e-mail of 16 May 2011, in which you ask for documents produced by the UK Border Agency outlining the findings of Operation Tolerance. Your request has been handled as a request for information under the Freedom of Information Act 2000.

I can confirm that the Home Office holds the information that you requested. However, after careful consideration I have decided that the findings of Operation Tolerance are exempt from disclosure under sections 23 Freedom of Information Act.

Section 23 provides that information held by a public authority is exempt from the Act if it was directly or indirectly supplied to the public authority by the Serious Organised Crime Agency (SOCA). The findings of Operation Tolerance were documented by the UK Human Trafficking Centre. As the UK Human Trafficking Centre is part of SOCA their findings are exempt from the Act.

If you are dissatisfied with this response you may request an independent internal review of our handling of your request by submitting a complaint within two months to the address below, quoting reference 18656. If you ask for an internal review, it would be helpful if you could say why you are dissatisfied with the response.

Information Access Team
Home Office
Ground Floor, Seacole Building
2 Marsham Street
London SW1P 4DF
e-mail: FOIRequests@homeoffice.gsi.gov.uk

As part of any internal review the Department's handling of your information request will be reassessed by staff who were not involved in providing you with this response.

If you remain dissatisfied after this internal review, you would have a right of complaint to the Information Commissioner as established by section 50 of the Freedom of Information Act.

Yours sincerely



(Adapted from a refusal notice on the Whatdotheyknow website)

Module 1: procedural basics

Quiz

1. Link the sections of the Act to the topics

What is a valid request	2
Duty to confirm or deny	1(1)(a)
Time for compliance	10
Which exemptions are absolute	
Means of communication	1(3)
Clarifying unclear requests	8
	11

2. Which of the following circumstances may affect the time by which the final response should be sent?

- ☐ Consulting a third party who may be affected by the request
- ☐ Asking for further information to clarify a request
- ☐ Carrying out the public interest test
- ☐ The volume and complexity of the information requested
- ☐ Considering whether an exemption applies
- ☐ When the requester has asked for information in printed form

3. Which of the following refusal notices comply with the relevant requirements?

Dear Mr Jones

Thank you for your request. This information is already available on our website.

Yours sincerely,



Information Officer

Dear Dr Smith

The school does hold the information you have requested. However, it is exempt under section 40 because it is personal data. It would not be fair to disclose the sickness absence record of a member of staff as this is sensitive personal data and would be extremely intrusive.

If you are not satisfied with this decision, you have the right to have the decision reconsidered. Please contact us if this is the case. You also have the right to appeal to the Information Commissioner's Office.

Yours sincerely,

Paula McDonald
Headteacher

Dear Mrs Cook

You have asked for "any information provided by MI5 relating to the 7/7 bombings". We are not obliged to confirm or deny whether we hold any information of this description, as sections 23(1) and 23(5) of the FOI Act provide an absolute exemption for information provided by specified security bodies, including MI5.

We do not offer an internal review procedure in relation to s.23 cases, but if you do not agree with our decision you may make a complaint to the Information Commissioner's Office. A complaint form can be found on their website:
www.ico.gov.uk

Yours,

Matthew Pym, Information Governance

Dear Sir

Re: request under Freedom of Information Act 2000

I write in relation to your correspondence dated 10 October. Dorsetshire Constabulary has processed your request in accordance with the provisions of the Freedom of Information Act 2000 (FOIA).

It is our decision that this information should not be released as it would not be in the public interest to do so. These minutes are exempt under section 36(2) of the aforementioned Act as the disclosure of minutes of meetings would prejudice the effective conduct of public affairs.

If you wish to instigate the internal review procedure you may do so by contacting myself within the next 14 days following receipt of this letter.

Dear Lucy

I've had a look for the information you're interested in, and all we've got is an opinion from the council's solicitor. I'm afraid you can't have this under Freedom of Information – it's covered by legal professional privilege so it's exempt under section 42(1).

This exemption is subject to a public interest test i.e. the information can only be withheld if the public interest in the exemption outweighs the public interest in disclosure. In this case we've come to the conclusion that the public interest favours refusing the request. This is because there's a strong public interest in keeping legal advice confidential so that the council isn't discouraged from getting honest legal advice in the future. We've also received some indication that we may face a legal challenge so really we have to protect our position.

The factors I've taken into account on the disclosure side are that this is a controversial decision which has generated a lot of publicity, and the legal advice would inform the public about the background to it. There is also a general interest in transparency. However, it's not really something which affects residents generally – it's quite a specific individual case – and there isn't a large amount of taxpayers' money at stake. Therefore the public interest in disclosure is quite low compared with the interest in protecting the confidentiality of legal advice.

I realise you're probably going to disagree with this; let me know if you want someone else to review my decision. If you're still not happy as you know you can go to the ICO.

Best wishes,
Janice

4. Which of these can a requester ask for under FOIA? (tick all that apply)

- ☐ A list of documents you hold on a certain topic
- ☐ A summary of a file
- ☐ Statistics put into a particular software package eg Excel spreadsheet
- ☐ A copy of the minutes of a meeting
- ☐ A certified photocopy of a legal document
- ☐ An electronic copy of a report
- ☐ To look at and take notes on a file

5. True or false?

When receiving a request, the authority must ask the requester for clarification

- ☐ True
- ☐ False

An authority must always comply with the requester's preference as to means of communication.

- ☐ True
- ☐ False

An authority must always provide advice and assistance to requesters

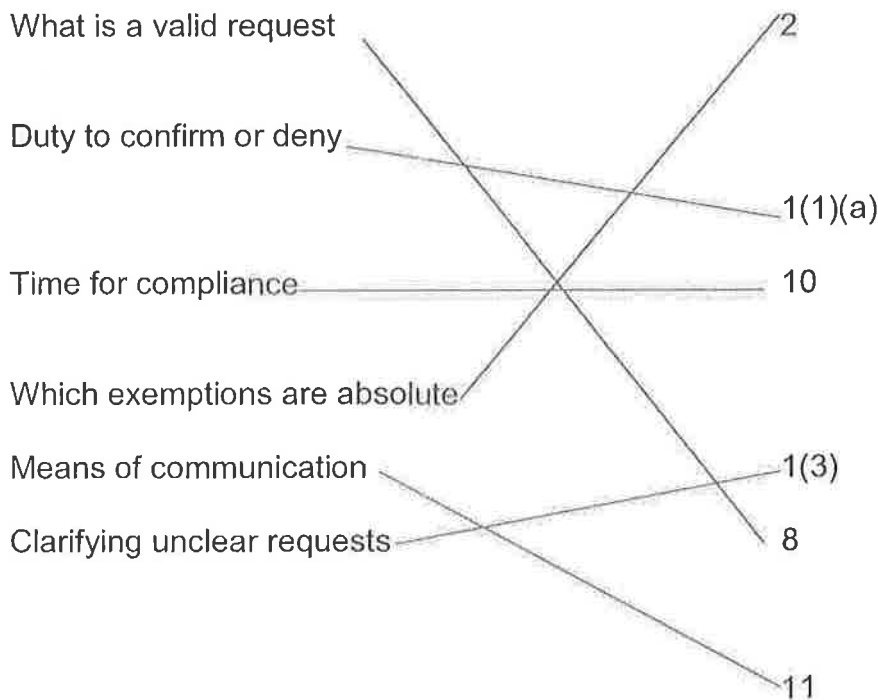
- ☐ True
- ☐ False

An authority must ask the requester in what format they wish to receive the information

- ☐ True
- ☐ False

Procedural basics quiz – WITH ANSWERS

1. Link the sections of the Act to the topics



2. Which of the following circumstances may affect the time by which the final response should be sent?

- ☐ Consulting a third party who may be affected by the request
- ☒ Asking for further information to clarify a request
- ☒ Carrying out the public interest test
- ☐ The volume and complexity of the information requested
- ☐ Considering whether an exemption applies
- ☐ When the requester has asked for information in printed form

3. Which of the following refusal notices comply with the relevant requirements?

Dear Mr Jones

Thank you for your request. This information is already available on our website.

Yours sincerely,

Information Officer

No good – it doesn't state the exemption.

Dear Dr Smith

The school does hold the information you have requested. However, it is exempt under section 40 because it is the personal data of the individual in question. It would not be fair to disclose the sickness absence record of a member of staff as this is sensitive personal data and would be extremely intrusive.

If you are not satisfied with this decision, you have the right to have the decision reconsidered. Please contact us if this is the case. You also have the right to appeal to the Information Commissioner's Office.

Yours sincerely,

Paula McDonald
Headteacher

Almost right, but doesn't have the full subsection(s)

Dear Mrs Cook

You have asked for "any information provided by MI5 relating to the 7/7 bombings". We are not obliged to confirm or deny whether we hold any information of this description, as sections 23(1) and 23(5) of the FOI Act provide an absolute exemption for information provided by specified security bodies, including MI5.

We do not offer an internal review procedure in relation to s.23 cases, but if you do not agree with our decision you may make a complaint to the Information Commissioner's Office. A complaint form can be found on their website: www.ico.gov.uk

Yours,

Matthew Pym, Information Governance

Correct – there is no obligation to offer internal review (except for EIR)

Dear Sir

Re: request under Freedom of Information Act 2000

I write in relation to your correspondence dated 10 October. Dorsetshire Constabulary has processed your request in accordance with the provisions of the Freedom of Information Act 2000 (FOIA).

It is our decision that this information should not be released as it would not be in the public interest to do so. These minutes are exempt under section 36(2) of the aforementioned Act as the disclosure of minutes of meetings would prejudice the effective conduct of public affairs.

If you wish to instigate the internal review procedure you may do so by contacting myself within the next 14 days following receipt of this letter.

No. It doesn't explain the public interest test properly and it doesn't mention appeal to the ICO

Dear Lucy

I've had a look for the information you're interested in, and all we've got is an opinion from the council's solicitor. I'm afraid you can't have this under Freedom of Information – it's covered by legal professional privilege so it's exempt under section 42(1).

This exemption is subject to a public interest test i.e. the information can only be withheld if the public interest in the exemption outweighs the public interest in disclosure. In this case we've come to the conclusion that the public interest favours refusing the request. This is because there's a strong public interest in keeping legal advice confidential so that the council isn't discouraged from getting honest legal advice in the future. We've also received some indication that we may face a legal challenge so really we have to protect our position.

The factors I've taken into account on the disclosure side are that this is a controversial decision which has generated a lot of publicity, and the legal advice would inform the public about the background to it. There is also a general interest in transparency. However, it's not really something which affects residents generally – it's quite a specific individual case – and there isn't a large amount of taxpayers' money at stake. Therefore the public interest in disclosure is quite low compared with the interest in protecting the confidentiality of legal advice.

I realise you're probably going to disagree with this; let me know if you want someone else to review my decision. If you're still not happy as you know you can go to the ICO.

Best wishes,
Janice

Correct – it doesn't have to be formal in tone as long as it includes subsection and explanation

4. Which of these can a requester ask for under FOIA? (tick all that apply)

- ☒ A list of documents you hold on a certain topic yes – not a s.11 issue
- ☒ A summary of a file yes
- ☒ Statistics put into a particular software package eg Excel spreadsheet yes
- ☒ A copy of the minutes of a meeting yes
- ☐ A certified photocopy of a legal document no
- ☒ An electronic copy of a report yes
- ☒ To look at and take notes on a file yes

5. True or false?

When receiving a request, the authority must ask the requester for clarification

- ☐ True
- ☒ False – only if it is unclear

An authority must always comply with the requester's preference as to means of communication.

- ☐ True
- ☒ False – it may not be reasonably practicable

An authority must always provide advice and assistance to requesters

- ☐ True
- ☒ False – only legally obliged in limited circumstances

An authority must ask the requester in what format they wish to receive the information

- ☐ True
- ☒ False – the s.11 right applies only if requester specifies in request (though it would be good practice)

2010 No. 2768

FREEDOM OF INFORMATION

**The Freedom of Information (Time for Compliance with
Request) Regulations 2010**

Made - - - - 17th November 2010

Coming into force in accordance with regulation 1(2)

The Secretary of State, in exercise of the powers conferred by section 10(4) of the Freedom of Information Act 2000(a), makes the following Regulations.

In accordance with section 82(2)(b) of that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

Citation and Commencement

1.—(1) These Regulations may be cited as the Freedom of Information (Time for Compliance with Request) Regulations 2010.

(2) These Regulations come into force on the day after the day on which they are made.

Proprietors of Academies

2.—(1) This regulation applies to a request for information that is received by the proprietor of an Academy.

(2) Where this regulation applies, subsections (1) and (2) of section 10 of the Freedom of Information Act 2000 have effect as if any reference to the twentieth working day following the date of receipt were a reference to either—

- (a) the twentieth working day following the date of receipt, disregarding any working day which, in relation to the Academy referred to in paragraph (1), is not a school day, or
- (b) the sixtieth working day following the date of receipt,

whichever occurs first.

(3) “School day”, for the purposes of this regulation, has the same meaning as in section 579(1) of the Education Act 1996(b).

Signed by authority of the Secretary of State for Justice

17th November 2010

McNally
Minister of State
Ministry of Justice

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations modify the period within which proprietors of Academies must respond to requests for information under the Freedom of Information Act 2000. The proprietor of an Academy must comply with the request within twenty working days of the date of receipt, disregarding any working day which, in relation to the Academy, is not a school day, or within sixty working days following the date of receipt, whichever is the sooner.

Proprietors of Academies are therefore subject to the same timeframes as the schools covered by The Freedom of Information (Time for Compliance with Request) Regulations 2004 (S.I. 2004/3364) and The Freedom of Information (Time for Compliance with Request) Regulations 2009 (S.I. 2009/1369).

No impact assessment has been produced for this instrument as no impact on the private or voluntary sector is foreseen.

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