

# FOIA: Where are we now? Where are we going?

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Dawn Monaghan, Group Manager Public  
Services

Housing Associations  
Conference.



# Topics

- How FOIA relates to you directly or indirectly
- The interface between 'Right to data' and FOIA Publication schemes
- Questions and hopefully answers!

# Housing Associations and FOIA

- Not all covered unlike DPA
- Why are they not covered?
- Section 5 Orders
- Other alternatives

# FOIA

Organisations not covered by FOIA

- Do not have any legal obligations to proactively publish official information or to answer requests for official information

However;

- The information they hold on behalf of a public authority maybe subject to FOIA
  - The information they author maybe subject to FOIA
- So,
- It's important that everyone knows the basics

# FOIA The Basics

- Two parts to the Act
- Proactive Dissemination – Publication schemes
- Reactive Response – Answering Requests for information

# FoIA The Basics

- Provides a general right of access to all information in any form, held by or on behalf of a public authority
- Sets out exemptions from that right
- Places obligations on public authorities
- Contributes to public accountability
- Fully retrospective

# FOIA The Basics

## **Who can have access to the information?**

- Anyone
- Worldwide
- Purpose and applicant blind

# FOIA The Basics

## **Proactive dissemination obligation**

- Adopt an approved publication scheme
- Publish in accordance with that scheme

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# FOIA The Basics

## **Answering a request for information obligations**

- Inform the applicant if requested information is held (except in certain circumstances)
- If the information is held provide the information to the applicant
- Answer requests ASAP must answer within 20 working days
  - Provide advice and assistance
  - If withholding information provide a refusal notice

# FOIA The Basics

## PROACTIVE DISSEMINATION

- Model Scheme approved by Information Commissioner
- Adopted by Public Authority
- 7 commitments, 7 classes of information, states methods and charges which can be made
- Commits Authority to providing a 'Guide to Information'

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# FOIA The Basics

## **Conform with the codes of practice**

- S45 Procedural code
- S46 Record management
- Conformity will enable compliance with the Act

# FoIA The Basics

## **FEES REGULATIONS**

- If the cost of complying with the request exceeds the cost limit in the regulations
- **£600** for, any Government Dept, House of Commons, House of Lords, Northern Ireland Assembly, The National Assembly for Wales, The armed forces of the crown
- **£450** for, any other public bodies

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# FOIA The basics

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# FOIA

- Public authorities such as Local Authorities are covered
- Any information you hold on their behalf is covered
- Any information they hold which was authored by you is covered
- Public authorities must respond to a request within 20 working days
- If the requested information was authored by you, or cites you, the public authority should inform you of the request and may ask your opinion, but the decision to disclose or withhold rests with them
- You have no rights of appeal through the FOIA legislation

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# Freedom of Information Act 2000 (FOIA)

## Answering an FOIA Request

Sept 13<sup>th</sup> 2011

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# Answering an FOIA Request

## **HAVE A PROCESS!**

- FOIA is good 'customer service'!
- Make sure ALL staff have awareness training
- Who may receive requests?
- Where will they send them?
- Who will determine if they are FOIA Requests?
- Who will answer them?
- Who will review them?
- Who will deal with ICO if and when necessary?

# Answering an FOIA Request

## **DETERMINING IF IT IS A REQUEST**

- Is it for recorded information
- Is in writing
- Does it have a valid name and address
- Is it 'normal course of business'?
- Is it covered by FOIA?/DPA?/EIR?/Other legislation
- Does it require consideration before release?

# Answering an FOIA Request

- If possible locate, retrieve, and provide all information requested ASAP.
  - If required provide advice and assistance
  - If required estimate cost
- Liaise with those who hold/author information
- If required liaise with Third Parties
- If necessary apply exemptions and carefully consider the justification
  - If necessary apply the PIT and consider justifications

# Answering an FOIA Request

- Send information ASAP
- Issue refusal notice (RN) with explanation of what is to be withheld the exemption/s that apply
- If necessary within the RN inform the applicant you have applied the PIR and what has been taken into account on both sides
- Internally review
- Co operate with ICO
- Keep a record of ALL correspondence

# Answering an FOIA Request

## **SOME EXAMPLES**

- Please provide me with a copy of the minutes of your board meeting.
- Could you send me the latest version of your recruitment policy?
- What are the opening times of your office over the holiday periods?

# Answering an FOIA Request

## **Some Examples**

- Can I see all the correspondence you have had with DfE?
- Please provide me with your correspondence with DfE regarding last years exam results?

# Answering an FOIA Request

## **Some Examples**

- I would like a copy of the legal advice you received regarding the decision to close the local school
- I wish to have a copy of the contract between you and ACME Paper company?
- I wish to have the tendering document of Acme Paper company provided to you last year?

# Answering an FOIA Request

## **Some Examples**

- Please give me all the information you hold about me?
- Please provide me with information relating to my planning application?
- Please supply me with the details of the decision regarding the closure of the local swimming pool?
- Please provide me with statistics of the omissions from the local oil refinery?

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# Freedom of Information Act 2000 (FOIA) The Basics!

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# FOIA The Basics

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# FOLA The Basics

## **WHO IS COVERED?**

- Public authorities' (PA) including:
- Government/Assembly Departments
- Local Authorities
- National Health Service
- Education
- Police
- Other bodies

# FOIA The Basics

## **WHO CAN REQUEST INFORMATION?**

- Anyone
- Worldwide
- Purpose and applicant blind

# FoIA The Basics

## OBLIGATIONS

### **Proactive dissemination**

- Adopt an approved publication scheme
- Publish in accordance with that scheme

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# FOIA The Basics

## **The calculation can include**

- Determining if the specific information is held
- Locating and retrieving the information
- The time of persons spent on the activity
- The time of persons spent should be calculated at an hourly rate £25/person/hour (regardless of costs)
- Disbursements

# FOIA The Basics

## **The calculation cannot include:**

- time taken to check a request meets requirements of the FOIA
- consideration of the request
- providing advice and assistance
- redaction of the information
- consideration of whether a request is vexatious
- obtaining authorisation to send information
- time taken calculating charge

# FOIA The Basics

## **EXEMPTIONS**

- 24 Exemptions (s21 – s44)
- 8 are 'Absolute' the public interest test need not be applied
- The rest are 'Qualified' the public interest must be applied

# FOIA The Basics

## **8 absolute exemptions**

- Info accessible by other means
- National security bodies
- Court records
- Parliamentary privilege
- Prejudice to effective conduct of public affairs
- Personal data
- Confidential information
- Statutory bars

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# FOIA The Basics

## PUBLIC INTEREST

- The FOIA favours disclosure
- Information must be released unless public interest in maintaining the exemption **outweighs** the public interest in disclosing the information. If the balance is equal the information should be released.
- An authority should record the considerations it makes when applying the test.

# FOIA The Basics

## THE POSSIBLE PROCESS

- Information already available
- Dealing under another regime
- Issuing a fees notice
- Disclose in full
- Disclose in Part applying the Exemptions/PIT
- Withhold applying the Exemptions/PIT
- Issue a Refusal Notice
- Complete an Internal Review
- Co operate with the ICO
- Comply with a Decision Notice
- Appeal to the Tribunal
- Appeal to Higher level tribunal on point of law

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# Data Protection Act 1998 (DPA) The Basics!

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# The Basics

- The Act applies to an activity not an organisation
- What are you doing with data, are you processing personal data?
- In other words do you collect, hold, use, disclose, retain or destroy information about an identifiable living individual
- It applies to just about everything you might do with an individuals personal details
- Compels you to notify ICO unless exempt from duty to notify and to handle personal data in accordance with the 8 DP Principles

# The Basics

## **Notification**

- Failure to do this is a criminal offence
- Who you are and how to contact you
- Details of what you are processing, the purpose for processing
  - Who you are processing about (data subjects)
  - Classes of the data e.g. financial details, goods provided
  - Sources and disclosure of the data
  - Security Questions

# The Basics

## **Notification**

- There is a fee £35 for smaller organisations £500 for those with 250 or more staff (PS also 25.9M turnover)
- Exempt if processing for only domestic purposes, national security, public registers or
- Limited processing of staff admin, marketing etc, some Not-for-profit organisations
- Register held and made available

# The Basics

## 8 Principles

- Fair and Lawful
- Purpose for processing
- Adequate, Relevant and not excessive
- Accuracy
- Retention
- Rights
- Security
- Transfer overseas

- Conditions for processing (Known as Schedule 2 and 3 Conditions)

# The Basics

## **EXEMPTIONS**

In certain circumstances there are exemptions from

- Notification
- Answering Subject Access Requests (SAR's)
- Issuing Fair Processing Notices
- Withholding information in certain circumstances (crime and taxation)

# The Basics

## RIGHTS

- Access of copy of information held
- Objection to processing likely to cause damage or distress
- Prevent processing for marketing purposes
- Decisions taken by automated means
- In certain circumstances have inaccurate data rectified, blocked, erased or destroyed
- Claim damages caused by a breach of the Act

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