

The Freedom of Information Act 2000

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Act Now Training

Does the FOI Act apply to you?

Are you a public authority
or a publicly owned company?

↓

ACT APPLIES TO YOU

↓

Publication Scheme

RM

Rights of Access

Public Authorities

Government Departments
Local Authorities
NHS bodies
Schools, Colleges, Universities
Police
Parliament
Assemblies
also see Schedule 1 of the Act

Publicly owned companies

- a) wholly owned by the crown
- b) wholly owned by any public authority listed in schedule 1

Additional PA's (Section 5)

- a) Exercise public functions
- b) Provide contracted out public authority functions
- Order required

Does the FOI Act apply to you?

Are you a public authority or a publicly owned company?



ACT APPLIES TO YOU



Publication Scheme

RM

Rights of Access

The Right of Access

- Information recorded in any form
- Held not necessarily owned by PA
- Information not record

Format of Response

Applicant can express a preference

- Copy of information in permanent form
- Inspect a record containing info
- Summary of information

Reasonably practicable

Cost

What do you have to do?

1. Duty to confirm or deny
To be informed in writing whether requested information is held
2. Duty to communicate information
To have that requested information communicated to him/her

Who can make a request?

- “A Person”
- Journalists
- Politicians
- Community groups
- Companies
- Unions/employees
- Overseas

Valid Requests S.8

1. In writing
2. Name of applicant
3. Address for correspondence
4. Describes the information requested

S.16 Advice & Assistance

- Public Body has a duty to provide this to applicants or potential applicants
- Public Body is deemed to have complied with this duty if it complies with the Code of Practice set out in Section 45.

Nuisance Requests S.14

- Vexatious Requests
- Repeated Requests

Destroying Records

- Once a record has been requested it cannot be destroyed.
- Criminal Offence
- Routine maintenance ?

Time Limits

- 20 working days
- “Date of Receipt”



Fees Notice (S.9)

- Under Prescribed Limit- FREE
- Limit :
 - Central Government £600
 - Others (incl. Local Government) £450
- Plus photocopying and disbursements
- Prescribed limit – Searching time not thinking time
- Over the limit – no need to supply
- Who decides?
- Value of officer time?



Fees Revision

- Searching Time?
- Thinking Time?
- Three month limit?

Refusal of a Request

- Public Body should issue a notice stating the reasons for refusal.
- Exemption/prejudice
- Public interest
- Next stage – local appeal - Commissioner

Exempt Information

Part 2 Sections 21-44

- Absolute and Qualified Exemptions



Public Interest Test

The difference is...

ABSOLUTE exemptions are not subject to the public interest test.

QUALIFIED exemptions require the public body to consider whether the public interest in maintaining the exemption from communicating information outweighs the public interest in communicating it.

Applying Public Interest

1. Whether the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information

2. Whether the public interest in maintaining the exemption from communicating information outweighs the public interest in communicating it

In the Public Interest

- Promoting accountability and transparency by public authorities for their decisions
- Promoting accountability and transparency in the spending of public money
- Allowing individuals and companies to understand decisions affecting their lives and to challenge them
- Informing the public of danger to public health or safety
- Contributing to public understanding and participation in a debate of importance
- Human Rights e.g. right to a fair trial

Not in the Public Interest

- Possible embarrassment of government or other officials
- Possible loss of confidence in government or public authority
- Seniority of persons involved
- Risk of applicant misinterpreting information

Absolute Exemptions

- Security bodies information
- Reasonably accessible by other means
- Court records
- Parliamentary privilege
- Effective conduct of public affairs (Commons/Lords)
- Personal data
- Breach of confidence
- Legal prohibition on disclosure

Qualified Exemptions

- National security
- Defence
- International relations
- Prejudice relations between parliaments/assemblies in the UK
- Economy of the UK
- Health and safety
- Law enforcement
- Audit functions

Qualified Exemptions (2)

- Formulation of government policy
- Communications with Royal Family/honours
- Environmental information
- Effective conduct of public affairs
- Legal professional privilege
- Commercial interests
- Investigations and proceedings
- Intended for future publication

FOI Exemptions – How useful?

- It depends where you are
- FOI has 23 exemptions
- 2 of them (**S39** & **S40**) refer to other access mechanisms
- 1 of them (**S35**) is only relevant to Central Government
- 1 refers to information about specific named security bodies (**S23**)

**21. Information Accessible By
Other Means**

Reasonably accessible to the Applicant..

- Even if a fee is payable
 - Publicly available by legislation
 - Publication scheme
- e.g. Library, website etc...

**22. Information Intended For
Future Publication**

“with a view to publication by authority or
some other person...”

date not determined

reasonable in all circumstances

qualified exemption

Defence & National Security

23. Supplied by or relating to Security Matters

24: Information that might prejudice UK’s
National Security

25: Certificates under Section 23 & 24

26: Information that might prejudice UK’s
defence/forces/allies

International & National Relations

27: International Relationships and Diplomacy
- TB's gifts

28: Relations within the UK
(devolved administrations)

29. The Economy

Prejudicial to :

- Economic interests of the UK/part of it
- Financial interests of devolved administration

30. Investigations & Proceedings Conducted By Public Authorities

- S.30(1) - Criminal investigations & proceedings

Duty to conduct/Held at any time

- S.30(2) - Wider investigations/proceedings

- Information from Confidential sources

Class exemption

31. Law Enforcement

Disclosure would prejudice prevention, detection of crime, administration of justice, immigration controls, security of prisoners etc...



32. Court Records

A document in the custody of the court for proceedings

A document served on a public authority for proceedings

A document created by court/staff

Class exemption

33. Audit functions.

Public authorities who audit other public authorities

Internal audit not covered

34. Parliamentary Privilege

Reserved for Houses of Parliament

Infringement of privileges of Parliament

35. Formulation of Government Policy etc

- a) Formulation of government policy
- b) Ministerial communications
- c) Provision of advice by Law officers
- d) Operation of ministerial private offices

Statistics and facts to be disclosed

Class exemption

36. Prejudice to Effective Conduct of Public Affairs

...likely to prejudice:

- free and frank provision of advice
- free and frank exchange of views for purposes of deliberation
- prejudice the effective conduct of public affairs

Qualified Person?

37. Communications With Her Majesty etc. & Honours

Information relating to communication with the Royal Family/Household, or the giving of Honours or Titles

Class exemption

38. Health and Safety

Where disclosure would endanger the physical or mental health or safety of any individual

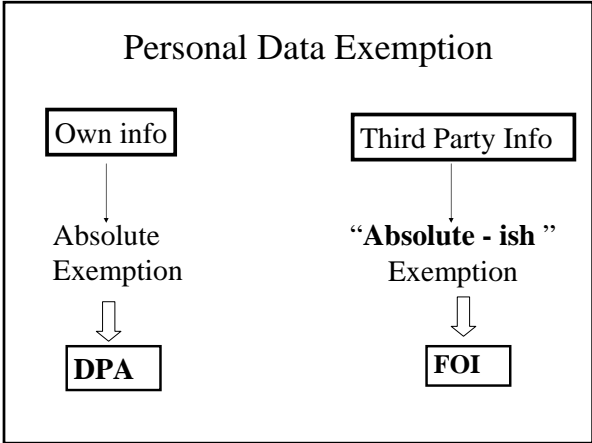
39. Environmental Information

Any information related to the Environment is to be dealt with according to the revised Environmental Information Regulations (and is more accessible as a consequence)

40. Personal Information

Information requested by applicant or third party

Absolute?



41. Information Provided In Confidence

Information received in confidence

Actionable breach of confidence

Absolute Exemption

No duty to confirm or deny if...

42. Legal professional privilege

Litigation privilege and advice privilege

Qualified Exemption?



43. Commercial Interests

Information constitutes a trade secret

Likely to prejudice the commercial interests of any person

Qualified Exemption

S.44 Prohibitions On Disclosure

- (a) prohibited by or under an enactment; or
- (b) incompatible with a Community obligation
- (c) contempt of court

Applying Exemptions

Complex structure of exemptions in Act

- Overlapping
- No single pattern
- Consistent approach
- Exemptions Panel- Public Interest
- Important to bear in mind spirit and intent of the Act

Records Management Code

1. RM Function
2. Roles & responsibilities
3. Policy Statement
4. Training & Awareness
5. Record Keeping
6. Records Maintenance
7. Disposal
8. Access
9. Performance

Schedule 12A LGA 1972

- | | |
|--------------------------------------|--------------------------|
| 1 to 6 Personal data | 1. Commercial interests* |
| 7 to 10 Commercial | 2. Legal privilege* |
| 11 Consultations on labour relations | 3. Enforcement* |
| 12 Legal Privilege | 4. Crime* |
| 13 & 14 Enforcement | 5. Protected Informant |
| 15 Protected informant | * Public Interest Test |

FOIA on EIR

Section 74

- Allows for the making of regulations...*“for the purpose of implementing the information provisions of the Aarhus Convention”*

Section 39

- Exempts information if the public authority holding it...*“is obliged by regulations under section 74 to make the information available to the public in accordance with the regulations”*

Main Provisions

- Request need not be in writing
- 20 working days response time – extension?
- Duty of advice and assistance (Reg 9)
- Format of response
- Fees must be reasonable
- No exception for excessive costs
- Complaints procedure

What can get in the way?

Inadequate resources

Lack of proper training

Poor information management

Slowness to change the culture of secrecy

(Irish Information Commissioner's Annual Report 2001)
