Cabinet Office

# Freedom of Information Code of Practice

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# Contents

[back of contents page – for printed publications, leave this page blank]

# Foreword

Freedom of Information is one of the pillars upon which open government operates. The Government is committed to supporting the effective operation of the Freedom of Information Act. For any Freedom of Information regime to be truly effective it is important that both its users and those subject to it have faith in it.

This Code of Practice provides guidance for public authorities on best practice in meeting their responsibilities under Part 1 of the Act. It sets the standard for all public authorities when considering how to respond to Freedom of Information requests.

The Information Commissioner also has a statutory duty to promote good practice by public authorities, including following this Code of Practice. In addition to this Code of Practice, public authorities should also consult the Commissioner's own guidance regarding best practice which can be found at www.ico.org.uk.

The Commissioner can issue practice recommendations where he or she considers that public authorities have not conformed with the guidance set out in this Code. The Commissioner can also refer to non-compliance with the Code in decision and enforcement notices.

This foreword does not form part of the Code itself.

# Introduction

This Code of Practice provides guidance to public authorities on the discharge of their functions and responsibilities under Part I (Access to information held by public authorities) of the Freedom of Information Act 2000 ("the Act'). It is issued under section 45 of the Act.

# 1. Right of Access

## Information

1.1 The Freedom of Information (FOI) Act 2000 ('the Act') gives a right of access to information. Any person who makes a request to a public authority for information is entitled:

- To be informed in writing by a public authority whether it holds information meeting the description set out in the request; and
- To have information the public authority holds relating to the request communicated to them.

These rights apply unless an exemption in Part II of the Act applies, or the request can be refused under sections 12 or 14, as set out in the legislation.

1.2 Section 84 of the Act defines the 'information' a public authority can be asked to provide under the Act. It makes clear that it means recorded information held in any form, electronic or paper.

1.3 Public authorities are not required to create new information in order to comply with a request for information under the Act. They only need to consider information already in existence at the time a request is received.

1.4 A request to a public authority for recorded information will be treated as a request under the Act, other than:

- information given out as part of routine business, for example, standard responses to general enquiries
- a request for environmental information; or
- the requester's own personal data.

1.5 A request for environmental information only should be dealt with under the Environmental Information Regulations 2004, and a request for a person's own personal data should be dealt with under the subject access provisions of the Data Protection Act 1998. Sometimes it may be necessary to consider a request under more than one access regime.

1.6 The Act provides a right to information. Disclosing documents will often be the most straightforward way of providing information. However, in other cases it may be appropriate to extract the relevant information for disclosure and put in a single document rather than redact the document that contains it.

1.7 There will be occasions where a request is made under the Act but does not in fact meet the above description of being a request for recorded information. This may include requests

for explanations, clarification of policy, comments on the public authority's business, and any other correspondence that does not follow the definition of recorded information in section 84. It is best practice to provide an applicant with an explanation of why their request will not be treated under the Act if this is the case and to respond to their correspondence through other channels as appropriate. It is open to the applicant to appeal the handling of their correspondence to the Information Commissioner's Office.

## Information held

1.8 In order to respond to a request for information public authorities need to consider whether the requested information is 'held' for the purposes of the Act. This is because there may be instances when a public authority possesses information, either electronically or in physical copy, that does not meet the criteria for information 'held' set out in the Act and to which the obligations set out in the Act therefore do not apply.

1.9 Section 3(2) sets out the criteria for when information is held by a public authority for the purposes of the Act. This includes:

- information held by a public authority at the time of the request;
- information stored in off-site servers or cloud storage;
- information held by other organisations and authorities on behalf of the public authority including, for example, off-site storage or information provided to lawyers for the purposes of litigation.

1.10 Information is 'held' by the public authority if it is retained for the purposes of the public authority's business. Purely personal, political, constituency, or trade union information, for example, will not be 'held' for the purposes of the Act and so will not be relevant for the purposes of the request. Where a public authority holds or stores information on behalf of another person or body that material will also not be 'held' by that authority for the purposes of the Act.

1.11 Information created after a request is received is not within the scope of the application and is therefore not "held" for the purposes of the Act. A search for information which has been deleted from a public authority's records before a request is received, and is only held in electronic back up files, should generally be regarded as not being held[1].

1.12 Public authorities need to search for requested information in order to communicate to the applicant whether the information they are seeking is held or not held by that public authority. These searches should be conducted in a reasonable and intelligent way based on an understanding of how the public authority manages its records. Public authorities should concentrate their efforts on areas most likely to hold the requested information. If a

[1] Public authorities should make sure they are also aware of the guidance provided in the Lord Chancellor's Code of Practice on the management of records issued under section 46 of the Freedom of Information Act 2000.

reasonable search in the areas most likely to hold the requested information does not reveal the information sought, the public authority may consider that on the balance of probabilities the information is not held.

### Section 77 (Offence of altering records etc. with intent to prevent disclosure)

1.13 Public authorities should make sure that their staff are aware that under section 77 of the Act it is a criminal offence to alter, deface, block, erase, destroy or conceal any information held by the public authority with the intention of preventing disclosure following a request under the Act for the information.

### Valid requests

1.14 Section 8 sets out the criteria for what constitutes a valid request under the Act:

- Section 8(1)(a) requires that a request for information must be made in writing. This can either be in hard copy or electronically;
- Section 8(1)(b) requires that a request for information must state the name of the applicant and an address for correspondence. Applicants must provide their real name and not use a pseudonym. Both email and postal addresses are acceptable;
- Section 8(1)(c) requires that a request for information must also adequately describe the information sought.

1.15 Public authorities do not have to comply with requests that do not meet the requirements set out in section 8. It is good practice to write to the applicant and explain this if this is the case.

1.16 A request submitted through social media will be valid where it meets the requirements of section 8 by providing an applicant's name and address for correspondence and a clear request for information. Addresses for correspondence can take the form of an email address or twitter handle, as well as postal addresses. Requests must be addressed directly to the public authority the applicant is seeking information from.

1.17 Requests submitted in a foreign language are not generally considered valid requests. Public authorities are not expected to obtain translations of suspected requests for information. It is good practice when receiving a request in a foreign language to ask the applicant to provide their request in English or Welsh in order for the request to be processed.

### Fees

1.18 It is open to public authorities, as a result of Regulations made under sections 9 and 13 of the Act, to charge for the cost of providing information requested under the Act. However, the majority of public authorities do not currently do so. It is also only possible to charge

where information will be released. It is not possible for public authorities to charge for requests where, for example, information is being withheld under exemptions.

1.19 Where the public authority intends to charge for the cost of providing information, they should send a fees notice stating the amount to be paid, including how this has been calculated, as soon as possible within the 20 working day response period. The notice should inform applicants:

- that the 20 working day period for responding to the request will be paused until payment is received (it is reasonable to set a deadline of three months in which the fee should be paid);
- how to pay the fee;
- their rights of complaint via internal review and to the Information Commissioner about the fee levied.

1.20 Public authorities may charge for:

- actual production expenses (e.g. redacting exempt information, printing or photocopying)
- transmission costs (e.g. postage)
- complying with the applicant's preferences about the format in which they would like to receive the information (section 11) (e.g. scanning to a CD)

1.21 It is not possible to charge for any staff time where the cost of compliance falls below the cost limit (see Chapter 6). There is no obligation to comply with any request exceeding the cost limit. However, should a public authority decide to respond to a request that exceeds the cost limit on a voluntary basis it can charge for the staff time needed to do so. In such circumstances staff time is chargeable at a standard rate, including the cost of making redactions (but only the physical cost of making redactions and not staff time or considering whether exemptions apply), to be included in the initial fees notice.

1.22 Public authorities may already charge for supplying specific categories of information on a different statutory basis to the fees they are allowed to charge under the Act. They can continue to do this even when these charges are higher than the fees that can be charged under the Act. However, public authorities may not charge where a statutory obligation to provide information for free already exists.

1.23 Once the fee is received, the public authority should process it promptly and inform the applicant of the revised 20 working day response deadline. It is permissible to wait until a cheque clears before recommencing work. Should a public authority underestimate the costs to be charged, it should not issue a second fees notice and should bear the additional cost itself.

## Means of communication

1.24 Section 11 of the Act says that if an applicant states a preference for receiving information in a specific format a public authority shall, if they are required to disclose

information, aim to meet this preference as far as is reasonably practicable. Applicants may, for instance, request to receive the information in an electronic or hard copy format.

1.25 When considering whether it is reasonable to meet an applicant's wishes under section 11, public authorities may, for instance, consider the cost and complexity of providing information in the format requested and the resources they have available.

1.26 If an applicant doesn't state a preference public authorities can communicate information by "any means which are reasonable in the circumstances" as set out in section 11(4).

1.27 Guidance on additional requirements in relation to datasets is provided in Chapter 11 and for model communications in Chapter 10.

# 2. Advice and assistance

2.1 Section 16 of the Act sets out a duty for public authorities to provide reasonable advice and assistance to applicants requesting information. This duty to advise and assist is enforceable by the Information Commissioner. If a public authority does not meet this duty, the Commissioner may issue a decision notice under section 50, or an enforcement notice under section 52.

2.2 Public authorities should bear in mind that other Acts of Parliament may also be relevant to the way in which they provide advice and assistance to applicants or potential applicants, for example, compliance with duties under the Equality Act 2010.

### Advice and assistance to prospective requesters

2.3 Public authorities should, as a matter of best practice, publish a postal address and email address (or appropriate online alternative) to which applicants can send requests for information or for assistance.

2.4 There is no requirement for a request for recorded information specifically to mention the Act in order to be a valid FOI request. Where an applicant asks a public authority to disclose recorded information but does not specifically mention the Act, and the request complies with section 8 (see paragraph 1.14 above), the public authority should consider the request under the Act in any case and let the applicant know that this is how the request is being handled. Where a person seeks to make a request orally they should be advised to put their application in writing in accordance with section 8(1)(a) of the Act.

2.5 There may be circumstances where a person is unable to frame their request in writing, for example owing to a disability. In these instances the public authority should make sure that assistance is given to enable them to make a request for information. For example, advising the person that another person or agency (such as a Citizens Advice Bureau) may be able to assist them with the application, or make the application on their behalf. Public authorities may also consider, in exceptional circumstances, offering to take a note of the application over the telephone and sending the note to the applicant for confirmation. Once verified by the applicant this would constitute a written request for information and the statutory time limit for reply would begin when the written confirmation was received.

### Clarifying the request

2.6 There may be instances when a public authority needs to contact an applicant to seek clarification either regarding their name or the information they are seeking in order for the request they have made to meet the requirements set out in section 8 of the Act.

2.7 If a public authority considers the applicant has not provided their real name the public authority can make the applicant aware it does not intend to respond to the request until further information is received from the applicant. For example, this may be the case when an applicant appears to have used a pseudonym rather than their own name.

2.8 There may also be occasions when a request is not clear enough to adequately describe the information sought by the applicant in such a way that the public authority can conduct a search for it. In these cases, public authorities may ask for more detail to enable them to identify the information sought.

2.9 Where a public authority asks for further information or clarification to enable the requester to meet the requirements of section 8, the 20 working day response period will not start until a satisfactory reply constituting a valid request is received. Letters should make clear that if no response is received the request will be considered closed by the public authority.

### Reducing the cost of a request

2.10 Where it is estimated the cost of answering a request would exceed the "cost limit" beyond which the public authority is not required to answer a request (and the authority is not prepared to answer it), public authorities should provide applicants with advice and assistance to help them reframe or refocus their request with a view to bringing it within the costs limit. Further guidance on the appropriate "cost limit" can be found in Chapter 6.

### Transferring requests for information

2.11 There will be occasions when a public authority is not able to comply with a request (or to comply with it in full) because it does not hold the information requested.

2.12 In most cases where a public authority does not hold the information, but thinks that another public authority does, they should respond to the applicant to inform them that the requested information is not held by them, and that it may be held by another public authority. The public authority should, as best practice where they can, provide the contact details for the public authority they believe holds the requested information.

2.13 Where the public authority who originally received the request wishes to ask a different public authority directly to deal with the request by transferring it to them, this should only be done with the applicant's agreement in case the requester objects to their details being passed on. This is because public authorities have a duty to respond to a requester and confirm whether or not they hold information in scope of the request as set out in paragraph 2.12 above.

# 3. Consultation with Third Parties

3.1 There will be circumstances when a public authority should consult third parties about information held in scope of a request in order to consider whether information is suitable for disclosure. These may include:

- when requests for information relate to persons or bodies who are not the applicant and/or the public authority; or
- when disclosure of information is likely to affect the interests of persons or bodies who are not the applicant or the authority.

3.2 Public authorities may want to directly consult third parties in these circumstances particularly if, for example, there are contractual obligations which require consultation before information is released. In other circumstances it may be good practice to consult third parties, for example, where a public authority proposes to disclose information relating to third parties, or information which is likely to affect their business or private interests.

3.3 Consultation will often be necessary because third parties who have created or provided the information may have a better understanding of its sensitivity than the public authority. On this basis it is important the public authority understands the views provided by the third party and gives them appropriate weight. The expert view of a third party may, as long as it is reasonable, be helpful if the applicant appeals against any refusal. The views of third parties will be especially relevant in cases where it is necessary to consider the prejudice and public interest tests.

3.4 Public authorities are not required to accept views provided to them from third parties about whether or not information should be released. It is ultimately for the public authority handling the request to take the final decision on release following any consultation it undertakes.

3.5 If a decision to made to release information following consultation with a third party it will generally be best practice to give the third party advance notice or to draw it to their attention as soon as possible.

3.6 There may be occasions where information being considered by a public authority relates to a large number of third parties. If a public authority intends to release information that relates to a large number of third parties it may be helpful to contact a representative organisation who can express views on these parties' behalf rather than contacting each third party individually. Alternatively, if no representative organisation exists, public authorities can also consider only notifying or consulting a representative sample of third parties regarding the disclosure of information, but these will be case by case judgements for the relevant public authority.

# 4. Time limits for responding to requests

## Statutory deadlines

4.1 The statutory deadlines for public authorities to respond to requests for information are set out in section 10(1) of the Act. These make clear that public authorities must respond to requests for information promptly and within 20 working days following the date of receipt of the request.

4.2 The date on which a request is received is the calendar day on which it arrives. Non-working days include weekends and bank holidays. If a request is received on a non-working day, for example a Saturday, the next working day i.e. Monday, should be counted as "day one" towards the deadline.

4.3 Some public authorities are subject to different deadlines as a result of regulations made under section 10(4) of the Act. For example, maintained schools, academies, archives, the armed forces (frontline units) and information held outside the United Kingdom at for example, embassies, have had the initial 20 working day deadline extended in certain circumstances as they may sometimes find it difficult to deal with requests under the standard deadlines. These initial deadlines cannot go beyond 60 working days following receipt of a request, except where payment of a fee is awaited (paragraph 1.9).

## Public interest test extensions

4.4 Public authorities may exceed the 20 working day deadline (or, where permitted by section 10(4) regulations, longer) if information falls within the scope of a qualified exemption and additional time is required to consider the public interest test. This is set out in Section 10(3) of the Act. This is normally described as a public interest test extension.

4.5 An extension is permitted "until such time as is reasonable in the circumstances", taking account, for example, of where the information is especially complex or voluminous, or where a public authority needs to consult third parties.

4.6 In general, it is best practice for an extension to be for no more than a further 20 working days although this will depend on the circumstances of the case, including again the complexity and volume of the material, and in some circumstances a longer extension may be appropriate

4.7 Where public authorities decide a public interest text extension is required they should write to the applicant to inform them that this is the case and ideally provide the applicant

with a new deadline for when they should receive their response.  If the deadline has to be further extended they should write again to the applicant.

# 5. Internal reviews

5.1 It is best practice for each public authority to have a procedure in place for dealing with complaints about its handling of requests for information. These complaints will usually be dealt with as a request for an "internal review" of the original decision.

5.2 Public authorities are obliged, under section 17(7) of the Act, to notify the applicant of their internal review procedure when responding to a request for information, including how to request an internal review if they have such a process. They should also inform the applicant of their right to complain to the Information Commissioner under section 50 if they are still dissatisfied following the outcome of the public authority's internal review.

5.3 It is usual practice to accept a request for an internal review made within 40 working days from the date a public authority has issued an initial response to a request and this should be made clear in that response to the applicant. Public authorities are not obliged to accept internal reviews after this date. Internal review requests should be made in writing to a public authority.

5.4 Requests for internal review should be acknowledged and the applicant informed of the target date for responding. This should normally be within 20 working days of receipt.

5.5 If an internal review is complex, requires consultation with third parties or the relevant information is of a high volume, public authorities may need longer than 20 working days to consider the issues and respond. In these instances, the public authority should inform the applicant and provide a reasonable target date by which they will be able to respond to the internal review. It is best practice for this to be no more than an additional 20 working days, although there will sometimes be legitimate reasons why a longer extension is needed.

5.6 In the event that clarification of an internal review request is required from the applicant, the normal 20 working day time period will not begin until it is received.

5.7 Public authorities who are allowed to exceed the normal 20 working day deadline as a result of regulations made under section 10(4), for example maintained schools and the armed forces, should apply the same time scales to internal reviews.

5.8 The internal review procedure should provide a fair and thorough review of procedures and decisions taken in relation to the Act. This includes decisions taken about where the public interest lies if a qualified exemption has been used. It might also include applying a different or additional exemption(s).

5.9 It is best practice, wherever possible, for the internal review to be undertaken by someone other than the person who took the original decision. The public authority should in all cases re-evaluate their handling of the request, and pay particular attention to concerns raised by the applicant.

5.10 The applicant should be informed of the outcome of their internal review and a record should be kept of all such reviews and the final decision made.

5.11 If the outcome of an internal review is a decision that information previously withheld should now be disclosed, the information should normally be provided at the same time as the applicant is informed of the outcome of the review. If this is not possible, the applicant should be informed how soon the information will be provided.

5.12 In responding to a request for an internal review, the applicant should again be informed of their right to apply to the Information Commissioner for a review of whether the public authority has met the requirements of the Act.

# 6. Cost limit

6.1 Section 12 of the Act allows public authorities to refuse to deal with any requests where they estimate that responding to the request would exceed the "appropriate limit", or 'cost limit' as it is more commonly known.

6.2 If a public authority calculates that responding to a request will take it over the cost limit it is not obliged to respond to it. The cost limit is calculated at a flat rate of £25 per hour. For central government departments the cost limit is £600 (24 hours) and for all other public authorities is £450 (18 hours).

6.3 Public authorities can only include certain activities when estimating whether responding to a request would breach the cost limit. These are:

- establishing whether information is held;
- locating and retrieving information;
- extracting relevant information from the document containing it.

6.4 Other factors including redaction time or any other expenses likely to occur in cost limit calculations cannot be included when estimating whether the response would exceed the cost limit.

6.5 When calculating the cost limit public authorities can aggregate requests which ask for the same or similar information and are received within a 60 working day period. These requests can either be from the same person or a group of people acting together.

6.6 Public authorities do not have to search for information in scope of a request until the cost limit is reached, even if the applicant requests that they do so. If responding to one part of a request would exceed the cost limit, public authorities do not have to provide a response to any other parts of the request.

6.7 The cost limit can be applied on the basis of a reasonable estimate at the time the request is received. Public authorities are not under any obligation to make a precise calculation although estimates should be sensible and realistic.

6.8 Public authorities should generally focus their attention on the locations most likely to hold the relevant information. Searches may take longer, for example, where information is only held in paper records or they are organised in a way that does not lend itself to the request in question. In some cases it may be helpful to conduct a sampling exercise to help establish likely cost but this is not essential.

6.9 Where a request is refused under section 12, public authorities should consider what advice and assistance can be provided to help the applicant reframe or refocus their request with a view to bringing it within the cost limit. This may include suggesting that the subject or

timespan of the request is narrowed. Any refined request should be treated as a new request for the purposes of the Act.

6.10 The cost limit should be applied before any exemption in Part II of the Act. This is because it will generally be necessary to establish whether information is held and to collate it before applying an exemption.

# 7. Vexatious requests

7.1 Under section 14(1) of the Act a public authority is not obliged to provide a substantive response to a request if the request is vexatious. Like section 12, section 14 should be considered before consideration of any exemption in Part II of the Act.

7.2 The Act does not define what makes a vexatious request. Public authorities should consider each case on its own facts, considering the factors below. Section 14(1) may be used in a number of circumstances where a request, or the impact of a request, is not justifiable or reasonable.

7.3 Public authorities should always think carefully about applying section 14. However, Section 14(1) should not be considered as something to be applied as a last resort or in exceptional circumstances.

7.4 There will be times when a request is so unreasonable or objectionable that it is clear it is a vexatious request. For example, an abusive or offensive request that causes an unjustifiable level of distress or where threats are, or have been, made against staff.

7.5 In other circumstances it may be less immediately obvious that a request should be considered as vexatious. A public authority should consider a request vexatious where the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. Factors public authorities might therefore want to consider include:

- the burden it places on a public authority and its staff;
- the motive of the requester;
- the value or purpose of the request;
- any harassment or distress to staff

7.6 It may be helpful for a public authority to ask itself the following questions when considering whether a request is vexatious:

- What is the burden imposed on the public authority by the request?
- Is there a personal grudge behind the request?
- Is the requestor unreasonably persisting in seeking information in relation to issues already addressed by the public authority?
- Does the request have any serious purpose or value?

7.7 Public authorities can also take into account the wider context of a request to help them identify whether a request should be considered vexatious. For example:

- what other requests have been made by the same requestor to the public authority
- the number and subject matter of the requests if there are multiple requests; and
- previous dealings with the requester

Having looked at the wider context, it is then important to assess whether the evidence supports or weakens the vexatious argument.

7.8 There may also be times when a public authority considers that responding to a new request following a series of previous requests would engage section 14(1) because doing so would be disruptive or burdensome to the public authority given the volume of previous correspondence.

7.9 The following are examples public authorities may want to use when considering whether a request is vexatious:

- When an applicant has engaged in a large volume of sustained correspondence over a number of years in abusive or confrontational language.
- Contact with a public authority that can be classified as long, detailed and overlapping. For example, a scenario when a requester has written to a series of officers on the same matters, repeating requests before a public authority has had the opportunity to answer an initial request and where responding to this correspondence would be a significant distraction from the public authority's main functions.
- Where a public authority considers that there is a deliberate 'campaign' by a number of requesters to purposefully disrupt the public authority's activities and functions via a high volume of requests on the same or similar topics.

These examples should not limit public authorities from using section 14 in other circumstances, as the reasons why a request might be considered vexatious will depend on the specific factors in each case.

7.10 Public authorities should also keep in mind the requirements of section 8, in particular, the requirement for applicants to provide their real name and not use a pseudonym. As set out in paragraphs 1.14 and 1.15 pseudonymous requests are not valid requests under the Act. However, the use of pseudonyms may also form part of broader considerations when considering whether or not a request, or a series of requests, should be considered vexatious.

7.11 Finally, public authorities should note that the public interest in obtaining the material does not act as a 'trump card', overriding the vexatious elements of the request and requiring the public authority to respond to the request.

### Interaction between section 12 (cost limit) and 14(1) (vexatious requests)

7.12 In some cases, responding to the request is so burdensome for the public authority in terms of resources and time that the request can be refused under section 14(1). This is likely to apply in cases where it would create a very significant burden for the public authority to:

- prepare the information for publication
- redact the information for disclosure
- consult third parties
- apply exemptions

7.13 It is not possible to use section 12 (cost limit) to refuse a request based on the above factors. In these cases, public authorities may want to instead consider using section 14 to

refuse to respond to the request based on the burden that responding to the request would create.

7.14 Public authorities should avoid using section 14 for burdensome requests unnecessarily. On this basis they should always consider whether section 12 applies in the first instance. For example, if a public authority considers that locating and extracting the information in scope would exceed the cost limit, section 12 is likely to be most appropriate. However, if, for the reasons set out in paragraphs 7.10 to 7.11 above, section 12 cannot apply they should consider refusing the request using section 14(1).

7.15 An example of when this may happen may include the burden of redacting multiple entries on a large database as although it may be possible to locate the database easily, redacting relevant entries (if there are thousands of entries) may create an unsustainable burden for the authority.

### Repeated requests

7.16 Under section 14(2) of the Act, if a public authority has previously complied with a request for information (i.e. provided the information sought), it does not need to comply with a further request for the same information made by the same person, unless a reasonable interval has elapsed between compliance with the first request and receipt of the second. A repeated request should be interpreted as an identical or substantially similar request. This will depend on the circumstances and each case should be considered on its own merits.

### Section 14 responses

7.17 If a public authority considers section 14 applies in any circumstances other than that referred in paragraph 7.14 they should provide a refusal notice to the applicant. This should issue within 20 working days and explain the public authority considers section 14 to be engaged. Public authorities should also include details of their internal review procedures and the right to appeal to the Information Commissioner. There is no obligation to explain why the request is vexatious.

7.18 There will be some circumstances when a public authority does not need to provide a refusal notice. Section 17(6) sets out that a public authority is not obliged to issue a refusal notice where it considers that it is unreasonable in all the circumstances to do so. For example, if a refusal notice has previously been issued for an earlier vexatious or repeated request and the public authority does not consider it reasonable to issue a further notice. It is worth noting that although section 17(6) excludes a public authority from the duty to provide a refusal notice, the public authority is still required to establish that each request is vexatious.

7.19 Public authorities should consider keeping an ongoing evidence log to record relevant correspondence or behaviour that has been taken into account when using section 14. This will be helpful in the event the applicant complains about the handling of the request.

# 8. Publication Schemes

8.1 Section 19 of the FOI Act requires all public authorities to adopt and maintain a publication scheme. This element of the Act is designed to increase transparency and allow members of the public to routinely access information relating to the functions of a public authority.

8.2 The Information Commissioner's Office has approved a model publication scheme which public authorities should use in the first instance.

Public authorities should also produce a guide to the scheme setting out:
- what information is published and by what means;
- a schedule of fees, which should set out clearly any charges for obtaining any of the information.

8.3 Publication schemes must be updated and maintained, so public authorities must have a process for reviewing published information in order to ensure it is updated at appropriate intervals. Public authorities should also follow the timescales for publication of particular types of information as set out in the Information Commissioner's Office guidance.[2]

8.4 This Code of Practice provides more specific guidance on two areas to supplement the existing guidance by the Information Commissioner's Office.

### Compliance Statistics

8.5 Public authorities with over 100 Full Time Equivalent (FTE) employees should, as a matter of best practice, publish details of their performance on handling requests for information under the Act. The information should include:

- The number of requests received
- The timeliness of the response e.g. whether the statutory deadline was met
- The number of requests where the information was granted
- The number of requests where the information was withheld
- The number of internal reviews

8.6 All public authorities should publish their statistics in line with central government, on a quarterly basis. Publication schemes are likely to form the best vehicle for publishing this information. A guide on producing a suitable publication scheme can be found on the Information Commissioner's website.

[2] This guidance is available on the Commissioner's website: https://ico.org.uk

## Senior Executive Pay & Benefits

8.7 Public authorities should also ensure publication schemes contain data to deliver sufficient transparency regarding the pay and benefits of senior executives and their equivalents.

8.8 In recent years, central government departments have increased the range of data published in respect of senior officials and primarily those at Director level (SCS2) and above. There will not always be a direct read-across for other public authorities but when considering what type of information should be published public authorities should consider those at management board level as a minimum equivalent.

8.9 Public authorities should publish information that covers the following three areas:

- Pay. Senior staff at Director level and equivalents. This should cover salaries of £90,000 and above. Names and job titles should also be included.
- Expenses. Senior staff at Director level and equivalents). This should cover details of international and domestic travel, business expenses and hospitality received.
- Benefits in kind. Director level and equivalents. Benefits in kind refer to benefits employees receive from their employment but which are not included in their salary. Data should be published to the nearest £100.

8.10 Public authorities should publish this type of information at regular intervals. It is recommended that information about pay should be published annually; expenses quarterly; and benefits in kind annually. Public authorities can refer to the Information Commissioner's Office guidance as a guide to the expected minimum level of detail. Local authorities should follow the publication requirements in the statutory Local Government Transparency Code on senior salary.

# 9. Transparency and confidentiality obligations in contracts and outsourced services

## Transparency

9.1 As more public services are contracted out to the private sector it is important that they are delivered in a transparent way, to ensure accountability to the user and taxpayer. There will be some circumstances when contractors hold information about contractual arrangements on behalf of a public authority which will then be subject to the Act.

9.2 It is important that contractors and public authorities are clear what this information is, and that it is made readily available to the contracting public authority when it receives requests under the Act.

## Information held on behalf of a contracting public authority

9.3 When entering into a contract with a third party it is likely that both the public authority and the contractor will hold information about these contractual arrangements. If a contractor holds information relating to the contract "on behalf" of a public authority, this information should be considered in the same way as information held by a public authority and so will be subject to the Act (as explained in Chapter 1). Such information would, for example, include that which a public authority has placed in the custody of a contractor (e.g. record storage) or where a contract stipulates that certain information about service delivery is held on behalf of an authority for FOI purposes.

9.4 When entering into a contract the public authority and the contractor should agree what types of information they consider will be held by the contractor on behalf of the public authority and indicate this in the contract or in an annex or schedule.. They should also think about putting in place appropriate arrangements for the public authority to access that information if a request is made for it under the Act.

9.5 These appropriate arrangements may include:

- how and when the contractor should be approached for information, and who the contact points in each organisation are;
- how quickly the information should be provided to the public authority bearing in mind the statutory deadline for responding to the request;
- how any disagreement about disclosure between the public authority and contractor will be addressed;

- how any request for internal review or subsequent appeal to the Information Commissioner will be handled;
- the contractor's responsibility for maintaining adequate systems for record keeping in relation to information held on behalf of the public authority; and
- where the public authority itself holds the requested information, the circumstances under which the public authority must consult the contractor about disclosure and the process to be adopted in such cases.

9.6 These arrangements should, as good practice, be set out in the contract or in a related Memorandum of Understanding.

9.7 Given the statutory obligations of public authorities to respond to requests under the Act, and the fact that information held on their behalf by contractors is information subject to the Act, contractors must comply with requests by a public authority for access to such information, and must do so in a timely manner.

9.8 Requests for information held by contractors on behalf of a public authority should be answered by the public authority. Contractors receiving requests should pass them to the public authority for consideration or respond to the applicant to let them know they should direct their request to the relevant public authority.

## Contract clauses

9.9 Where contractors deliver services on behalf of a public authority the contract with the public authority will need to make clear that contractors will need to fully assist the public authority with their obligations under the Act in line with the guidance set out in this chapter. The contract should include details of how non-compliance with these obligations will be dealt with. This should apply to both new and amended contracts.

9.10 If existing contracts do not set out these provisions, public authorities and contractors should consider alternatives to ensuring that the contractor provides the public authority access to information held on the public authority's behalf. Options to consider include a supplementary Memorandum of Understanding.

9.11 Public authorities may be asked to accept confidentiality clauses when entering into a contract with a third party. Public authorities should carefully consider whether these agreements are compatible with their obligations under the Act and the public interest in accountability. It is important that both the public authority and the contractor are aware of the legal limits placed on the enforceability of such confidentiality clauses[3] and the importance of making sure that the public can access a wide range of information about contracts and their delivery. Public authorities should be mindful of any broader transparency obligations to publish regular details of spending, tenders and contracts on external suppliers; contracts should not hinder such transparency reporting.

[3] Under common law a breach of a duty of confidentiality is not enforceable in the courts where an overriding public interest justifies the breach.

9.12 However, where there is good reason to include non-disclosure provisions in a contract, it may be helpful for public authorities and contractors to agree the types of information which should not be disclosed within a contract and the reasons for this confidentiality.

9.13 There may also be circumstances when public authorities offer or accept confidentiality arrangements that are not set out within a contract. Public authorities should also follow the guidance set out in this chapter in these circumstances. There will be circumstances when these agreements will be appropriate in order for the public authority to receive information from a third party and so this information may be protected by the exemptions in the Act. But again, it will be important that both the public authority and the third party are aware of the legal limits placed on the enforceability of expectations of confidentiality and the public interest in transparency, and for authorities to ensure that such expectations are created only where it is appropriate to do so.

# 10. Communicating with a requester

10.1 Public authorities may find the following guidance helpful for ensuring responses to requests for information and internal reviews meet the requirements set out in the Act.

10.2 Any initial response to a request for information under the Act should contain:

- A statement that the request has been dealt with under the Act;
- Confirmation that the requested information is held or not held by the public authority or a statement neither confirming or denying whether the information is held;
- The process, contact details and timescales for the public authority's appeals process;
- If some or all of the information cannot be disclosed, details setting out why this is the case, including the sections (including subsections) the public authority is relying on if relevant. However, in explaining the application of named exemptions, public authorities are not expected to provide any information which is itself exempt.

10.3 The response to a request for an Internal Review should contain:

- Whether the Internal Reviewer agrees with the original response or not;
- Whether the reviewer considers that new exemptions are applicable and, if so, details of these exemptions and why they are engaged (to the extent they can without providing exempt information).
- Information about the applicant's further right of appeal to the Information Commissioner and contact details for the Information Commissioner's Office.

# 11. Datasets

11.1 Sections 11,11A, 11B and 19 of Part I of the Act provide additional rights in relation to the disclosure and, in some cases, re-use of datasets.

11.2 The provisions governing the release of a dataset apply to all datasets held by any public authority subject to the Act.

11.3 Provisions relating to re-use only apply to the relatively small proportion of datasets not subject to the Re-use of Public Sector Information (PSI) Regulations 2015[4]. Guidance about the re-use of datasets under the FOI Act is provided in the Annex to this Code of Practice.

11.4 The Act does not require the creation of datasets for publication, nor does it require datasets to be updated if they would not otherwise have been updated as part of the public authority's function. In deciding whether to release a dataset, a public authority should consider any exemptions which may apply and in particular, the exemption in section 40 of the Act relating to personal data and the Information Commissioner's Code of Practice on Anonymisation.

11.5 These considerations should also be taken into account when considering the release of an incomplete or draft dataset. When releasing an incomplete dataset it is good practice to explain the dataset is not complete and the likely implications of this.

### i. Scope

11.6 The definition of dataset is limited to the criteria specified at section 11(5) of the Act.

11.7 The first part of the definition (subsection (5)(a)) means that the datasets caught by the Act are those datasets which a public authority has originally obtained or recorded for the purposes of providing services or carrying out its functions, including decision-making.

11.8 The second part of the definition limits datasets to factual information subject to the two criteria in subsection (5)(b). The intention behind the first criterion is to catch 'raw' or 'source' data. Calculation of information within the dataset does not count as 'analysis' or 'interpretation'. Therefore aggregated data forming a high-level dataset (such as the creation of annual figures from data that were collected weekly) form a dataset within the definition of the Act.

11.9 The second criterion excludes official statistics which are subject to their own regime of disclosure and publication, including under the Statistics and Registration Service Act 2007.

[4] http://www.nationalarchives.gov.uk/information-management/re-using-public-sector-information/

11.10 Subsection 5(c) is also intended to ensure only 'raw' or 'source' data is captured within the meaning of a dataset. The key consideration here is whether the reorganisation or adaptation represents a 'material alteration' to the original presentation of the dataset. Minor or insignificant changes to a dataset will not take it outside the definition.

11.11 The other key consideration in the definition is how much, if any, of the data in the dataset has been changed or altered. If 'all or most' of the data in the dataset meet the criteria set out in subsection 5, then the dataset will fall within the definition. Examples of where datasets will continue to fall under the definition within the Act include:

- The original dataset used to form a new dataset;
- Amended datasets where work has been undertaken to improve the quality of a dataset;
- Datasets that have been anonymised, or otherwise had exempt information removed.

11.12 Where information requested meets the definition of a dataset, the authority will be under a duty to provide the dataset in a re-usable format where reasonably practicable.

### ii. Disclosing datasets in an electronic form which is capable of re-use

11.13 When releasing any dataset under the Act public authorities must, as far as reasonably practicable, provide it in a re-usable format. A re-usable format is one that is machine readable, such as Comma-separated Value (CSV) format.

11.14 Where datasets are only held in non-re-usable formats, the public authority is not obliged to convert the dataset before releasing it where it is not reasonably practicable to do so.

11.15 In deciding whether it would be practicable to provide the dataset in a re-usable format, the public authority can take account of all the relevant circumstances. These circumstances may include the time and the cost involved in converting the dataset from a proprietary to a re-usable format, and the resources available to the public authority.

11.16 If the public authority concludes that it would not be reasonably practicable to provide the dataset in a re-usable format, then the public authority must still provide the dataset in another format.

### iii. Standards applicable to public authorities in connection with the disclosure of a dataset

11.17 When releasing datasets public authorities should adhere to the Public Data Principles where possible. These principles are expected good practice for central government departments and recommended for the wider public sector.

11.18 It is recommended good practice that datasets will be accompanied by sufficient metadata and contextual information about how and why the dataset was compiled or created.

11.19 When procuring new data processing systems, public authorities should reference the Government Principles for Open Standards in new government information technology specifications for software interoperability, data and document formats. The Principles are compulsory for central government departments, their agencies, non-departmental public bodies and any other bodies for which they are responsible.

### iv. Cost of providing the dataset in a reusable format

11.20 If the cost of complying with the request would not exceed the appropriate limit and the information is not otherwise exempt, the public authority must provide the dataset (subject to any right to charge a fee). If the requestor expresses a preference for the dataset in electronic form, the public authority must provide it in a reusable format, so far as reasonably practicable. A public authority may not charge for the cost of providing the dataset in a reusable format, but, in deciding whether it would be reasonably practicable to provide it in that format, it can take account of the cost, time and resources that would be involved.

### v. Publication of datasets as part of a publication scheme

11.21 Public authorities should consider publishing existing and newly created datasets as part of their publication scheme. If the dataset would be released on request, the public authority should consider publishing it through the public authority's publication scheme.

11.22 Public authorities should consider their long term plans and processes for the collection and storage of datasets, keeping in mind that they should be made easily accessible and in a re-usable format for requests or publication as part of their publication scheme as well as for normal business purposes.

11.23 When publishing a dataset on their website, public authorities, should, where possible, publish it in a machine readable format, so that the data can be directly downloaded from a given URL.

11.24 If a dataset has been requested from a public authority under the Act, then the authority must publish that dataset in accordance with its publication scheme unless the public authority is satisfied that it would not be appropriate to publish it. If the public authority holds an updated version of the dataset it must also publish that updated version, unless it is satisfied that it is not appropriate to do so.

11.25 When the public authority publishes the dataset under its publication scheme, it must (as for responding to a request) provide it in an electronic form that is capable of re-use, where it is reasonably practicable to do so.

# Annex – Reuse of datasets

As well as providing additional rights in relation to the disclosure of datasets, the Act also provides for the re-use of datasets not subject to the Re-use of Public Sector Information (PSI) Regulations 2015. The National Archives has provided separate guidance about the re-use of information[5] in accordance with those Regulations.

Only where the PSI Regulations do not apply should re-use be considered under the Act. They do not apply to datasets held by educational and research establishments, public service broadcasters, cultural or performing arts bodies (other than public sector museums, libraries and archives), or which are held by other public authorities for purposes unrelated to their public task. [6] The easiest way for a public authority to comply with the licensing requirements of both FOI and PSI is to make datasets available for re-use under the Open Government Licence, where appropriate.

**Giving permission for datasets to be re-used**

Public authorities should release datasets with accompanying details of licence conditions that apply to the re-use of the dataset or any limitation on re-use by virtue of third party intellectual property rights.

Consideration should also be given to the extent to which such information is exempt from disclosure under sections 41 and 43(2) of the Act.

The public authority should ascertain whether copyright and/or database rights ('intellectual property') in the dataset are owned solely by the authority or whether there is a third party interest. Nothing in the Act's re-use provisions overrides the rights of any third parties who may own intellectual property contained in the datasets. If a public authority grants a licence to re-use a dataset or part of a dataset containing third party intellectual property without the owner's permission it may constitute an infringement of the third party's rights.

Where there is a third party interest any re-use licence must permit re-use only of those parts of the dataset that the public authority owns. However, if possible and subject to any confidentiality requirements, the public authority should identify to the requester who owns the remainder of the rights.

In some cases the public authority may be able to obtain the third party's permission to grant the re-use of the third party intellectual property outside the Act.

[5] http://www.nationalarchives.gov.uk/information-management/re-using-public-sector-information/
[6] http://www.nationalarchives.gov.uk/documents/information-management/guidance-on-public-task-statements.pdf

UK government policy is that wherever possible Crown Copyright material should be made available for re-use. If in doubt it is advisable to seek legal advice.

## Licensing

If the dataset that is being provided, or any part of it, is a relevant copyright work owned solely by the public authority, the public authority must make that work available for re-use in accordance with the terms of one of the licences specified in the following paragraphs. The UK Government Licensing Framework[7] (UKGLF) provides an overview of the arrangements for licensing the use and re-use of public sector information. The starting point is that public authorities are encouraged to use the Open Government Licence for datasets which can be re-used without charge.

The Open Government Licence is the default licensing model for most Crown copyright information produced by the UK Government and supplied without charge. It is a non-transactional open licence which enables use and re-use with virtually no restrictions. It is applicable when use and re-use, including for commercial purposes, is at no cost to the user/re-user. Established as part of a wider UK Government Licensing Framework, it is hosted on The National Archives website[8].

It is recognised that the Open Government Licence will not be appropriate in all cases, for example, in circumstances where information may only be used for non-commercial purposes. The Non-Commercial Government Licence was developed to cover that situation. As with the Open Government Licence, public authorities can link to the Non-Commercial Government Licence on The National Archives website.

Where a public authority charges a fee for the re-use of a dataset, it must do so in accordance with the Charged Licence. The licence consists of standard licensing terms and, like the above licences, forms part of the UK Government Licensing Framework. It can also be accessed on The National Archives website[9].

## Costs and fees

It is important to distinguish between the cost to the public authority of disclosing a dataset (including in a re-usable format), and the fees that can be charged to the applicant for making a dataset available for re-use under section 11A (or, where relevant, the equivalent charging provisions in the PSI).

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[7] http://www.nationalarchives.gov.uk/information-management/re-using-public-sector-information/licensing-for-re-use/ukglf/

[8] http://www.nationalarchives.gov.uk/information-management/re-using-public-sector-information/uk-government-licensing-framework/open-government-licence/

[9] http://www.nationalarchives.gov.uk/information-management/re-using-public-sector-information/uk-government-licensing-framework/open-government-licence/other-licences/

The Freedom of Information (Fees for Re-use of Datasets) Regulations 2013 provide that public authorities may charge a fee for making relevant copyright works available for re-use, unless it already has another applicable statutory power to charge. If a public authority wishes to charge a fee and is already entitled to do so under any other applicable legislation for the re-use of the relevant copyright work, then it must do so on that other statutory basis instead of these regulations.

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