Cabinet Office

FOI CODE OF PRACTICE: CONSULTATION RESPONSES

In the Cabinet Office's Freedom of information Code of Practice Consultation Document, which was published on 15 November 2017, we made a commitment to publish the responses received to the consultation. As per that commitment, the names and contact details of respondents have been removed, but the names of the organisations they responded on behalf of have been included.

ARCHIVES AND RECORDS ASSOCIATION, UK AND IRELAND (ARA)

1. Is the guidance in chapter 1 of the Code clear and helpful for public authorities to understand the right of access to information in the FoI Act and how to manage requests on this basis?

The guidance in chapter 1 is helpful. In particular ARA likes the inclusion on detail regarding how requests made via social media can be acceptable as FoI requests (1.16, p. 13).

Are there any other areas where it would be helpful for this guidance to be more detailed or where it could be clearer?

(1.4, p.11, first bullet point) It is useful to spell out the distinction between routine enquiries and enquiries treated as FoI, which is what is likely to happen in practice. Would it be helpful to add some guidance regarding the expected timeframe for responding to enquiries treated as non-FoI? Just a simple sentence such as 'enquiries that are not deal with under FoI may be answered according to the authority's internal service level guidance.' ARA thinks some authorities may still use the 20 working days deadline to deal with enquiries that are not strictly speaking treated as FoI.

(1.6, p. 11) The clarification of the distinction between documents and information is useful. In ARA's experience, enquirers (especially in the context of Archival collections) sometimes ask for access to a whole series or set of documents under FoI, rather than information. Would it be useful to add a sentence along the lines of 'If enquirers ask for access to an entire series or set of documents or files, the authority can advise them to reframe their request to clarify specifically what information they require'.

(1.12, p.12) This sounds reasonable and it encourages a reasonable use of the public authority's time. It may be helpful to add a line to clarify what may happen in case of a request for a review or an appeal. For example, the authority might need to explain that, following the guidance in the code, it has concentrated the search on the most likely places and is not going to look elsewhere.

(1.14, p. 13) If the twitter handle is mentioned at (1.16, p.13), ought it to be included in the second bullet point at (1.14)? For example, a sentence along the lines of 'Both email

and postal addresses are acceptable; as well as a twitter handle'.

2. Does the guidance about publication of FoI compliance statistics provide enough detail for public authorities to start publishing their own compliance statistics? If further guidance on this would be helpful what should this cover?

ARA believes the guidance in (8.5, p.29) provides useful detail. Additional questions that may arise are: whether repeated requests from the same enquirer count as new requests for statistical purposes; if only part of the information from a particular request was granted, with the rest rejected, would that count as granted or withheld? Is another category required to cover this?

3. Is the guidance about the publication of information about senior pay and benefits clear and helpful? Are there any areas of this guidance where further detail would be useful?

(8.8, p. 30) ARA finds the wording of the second sentence of this paragraph unclear. Does it mean that information published on senior officials by authorities may not always be directly comparable, and at the very least authorities should include management board members?

4. Does the proposed guidance on vexatious and repeated requests provide the right level of detail about the circumstances in which public authorities might want to consider using section 14? If further guidance on this would be useful what should this cover?

(7.6, p. 26) provides useful guidance to help assessing whether a request is vexatious, as does section 7 in general.

5. Is it helpful to merge the datasets Code of Practice with the main section 45 Code so that statutory guidance under section 45 can be found in one place?

Yes, it is useful to place all the guidance in one place.

6. If you agree the datasets Code should be merged is it helpful to split the datasets guide into a section on release of datasets and a section on guidance on re-use of datasets?

Yes, it makes sense to split them in this way.

7. Are there any other areas in Part I of the Act where it would be helpful to have additional guidance in the Code? If so, what do you think the additional guidance should cover and why?

The guidance appears to be comprehensive. The reference to catalogues and indexes in (Paragraph 10, p.7) of the 2004 code was useful, as a means of helping applicants identify the information they seek. Perhaps a similar reference may be added to (2.8, p. 17).

Additional observations:

1. (2.13, p. 17) In the current code of practice the authority is only required to consult the applicant before transferring the application if they have ground to believe that the applicant would object to the transfer. Would having to consult the applicant by default make the process more bureaucratic and longer for the authority? It should

be reasonable for the authority receiving the request to transfer it to another public authority that now holds its records, for example an archive service. This should not be mandatory but it should be allowed, with the public authority receiving the original request informing the applicant that their request has been transferred to a different authority.

2. (6.5, p. 24) The applicant may find it hard to understand why their seemingly 'short' request is refused on the grounds of cost, so it may be helpful to explain that the request has been aggregated. An explanation similar to the one detailed in (7.17, p. 28) may be useful.

3. (6.6, p. 24) This is a useful clarification based on our experience.

BIRKBECK COLLEGE, UNIVERSITY OF LONDON [THIS WAS A PERSONAL RESPONSE, NOT AN AUTHORITY RESPONSE]

2. FOI Statistics

2.1 The governments suggests all bodies with over 100 staff to publish statistics on the number of requests and the percentage released or withheld. This is useful because we know so little about what's happening outside of the (mainly) central government departments monitored. We know from the great work by the IFG that more FOI requests are being withheld, more are delayed and fewer organograms are being published. But beyond that we know very little.

2.2 This is important because, back in 2009 and 2010, we found that local government had received around 80% of all requests: FOI is, above all, a local phenomenon. What's more, numbers from 2005 onwards had increased more than threefold from 60,000 requests per year to 197,737 by 2010 (and we suspected that may be an underestimate).

- Numbers of requests
- Rates of release
- Rates of refusal.

2.3 We know that requests get more complex but, all things being equal, authorities deal better with them over time. It would be useful to have data that is open and comparable. A series of pdfs or other formats would hinder comparability.

3. Publishing Pay

3.1 The second interesting suggestion is the proposal to publish all pay over £90,000, How it is published will be important (it needs to be open and comparable) and where published (how it can be accessed). Pay data published as a series of pdfs would hamper any important comparison.

4. Outsourcing

4.1 The Code offers some welcome clarity on outsourcing and public contracts, an area of great importance to current FOI debates.

4.2 Would it also be useful, if possible for separate details on number of requests made in this area to get a sense of the demand and interest. The reach of FOI in this area should be promoted more generally, with wider publication of the rules and information.

BRACKNELL FOREST COUNCIL

1. The chapter on 'Right To Access' is clearly presented. It may be an additional assistance for the references to sections [e.g. section 12 under point 1.1] to be printed in full so that the section can be read in conjunction to the paragraph content.

2. The guidance about statistics is clear and highlights the need for this information to be provided. It may be helpful to state that the statistics could be published e.g. on an annual basis at the end of the financial year.

3. This section on pay, expenses and benefit in kind is explicit and clear. If the question is to highlight the 'Board level' leaders in the organisation should this cover salaries of £100,000 and above. If the extension is to capture senior management that are not sitting on the Board then it would be appropriate to cover salaries of £90,000 and above. I believe the essence of this part of the Code is to make senior (Board) leaders transparent to the community they service. It may be that a figure is not provided but an explicit reference that as a member of the business's corporate leadership board your salary etc. will be subject to the pay and benefits publication.

4. The proposed guidance is clear and detailed in how public authorities will manage vexatious and repeated requests.

5. It will be better to have the merged datasets and guidance in one place. The sections in the Act should be printed in full so that the information is understood in the context of the section mentioned (e.g. section 45 / section 14).

6. Yes. This would help with location and comparison of release and re-use of datasets.

7. A section under the heading 'Other Areas in Part I' "Associated legislation" 1. Data Protection Act 1998 (General Data Protection Regulation soon to be Data Protection Act 2018) 2. Environmental Information Regulations 2004. The DPA relates to personal data and as such should the requester's request refer to data about a living person that the request will be returned requesting clarity of whether the request is under the FoI or DPA. The time will be paused until the requester clarifies the legislation from which that they are seeking to acquire a response. The EIR relates to environmental enquiries and as such should the requester's request refer to environmental issues that the request will be returned to get clarity of whether the request is a FoI or EIR request. The time will be paused until the requester clarifies the legislation from which they are seeking to acquire a response.

CALDERDALE COUNCIL

1. Is the guidance in chapter 1 of the Code clear and helpful for public authorities to understand the right of access to information in the FOI Act and how to manage requests on this basis? Are there any other areas where it would be helpful for this guidance to be more detailed or where it could be clearer?

YES

2. Does the guidance about publication of FOI compliance statistics provide enough detail for public authorities to start publishing their own compliance statistics? If further guidance on this would be helpful what should this cover?

YES

3. Is the guidance about the publication of information about senior pay and benefits clear and helpful?

YES

4. Does the proposed guidance on vexatious and repeated requests provide the right level of detail about the circumstances in which public authorities might want to consider using section 14? If further guidance on this would be useful what should this cover?

Para 7.5 talks about the '*motive of the requester*' and the '*value or purpose of the request'* which seems to be at odds with the legislation that states that requests should be treated as being "*applicant and purpose blind*". Whilst I'm not disagreeing with the points made, perhaps it could be re-worded. If we were to try and guess requesters "*motives*" each time a request was received we would probably prefer not to answer the majority of them. It would be difficult to divide our reasoning between adopting the purpose and applicant blind approach for original requests and then shifting towards establishing a motive later on.

In addition, whilst the paper mentions valid requests and not being able to use pseudonyms, which is often the case with vexatious requesters, the paper does not address how we can approach this when, having been deemed vexatious by an authority, the requester can simply start all over again under a different name using the "WDTK" (Whatdotheyknow)website which anonymises email addresses by providing the requester with reference number email addresses which are unidentifiable. Unlike Subject Access Requests there is no requirement for identification with an FOI, so again it would be difficult to identify a vexatious requester if they keep on changing their name via a WDTK FOI request.

5. Is it helpful to merge the datasets Code of Practice with the main section 45 Code so that statutory guidance under section 45 can be found in one place?

YES

6. If you agree the datasets Code should be merged is it helpful to split the datasets guide into a section on release of datasets and a section on guidance on re-use of datasets?

YES

CAMBRIDGESHIRE COUNTY COUNCIL

Here are comments from Cambridgeshire County Council about the FOI code of practice:

1. Section 2.9 – there is a need to clarify what happens to the request if no clarification is received, would it be closed after say 3 months?

2. Section 4.2 is different to how CCC and several other organisations would calculate the deadline currently. It gives the example, “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”. Day one under FOI is the date “after receipt”. If someone sent an email at 23.30 on Sunday, we would pick it up on Monday morning and log it the same as a request received at 01.30am on the Monday morning (i.e. “day one” is actually the Tuesday).

Given that the FOI Act timescales all operate against working days (except for schools etc), we don’t understand the logic behind that. Whilst technically an email can hit our email server on Sunday night and be ‘received’ that day in that sense, the whole point is that’s a non-working day so nothing can happen (nor would the requestor expect it to) until the Monday. We do not see why the date received in that situation wouldn’t be the first working day after it was sent.

3. 8.5 – We can do quarterly stats but the outcome headings suggested are meaningless as they work on the basis that responses are binary (you either disclose all or refuse all). Here are some suggested data to be published.

· The number of requests where the information was granted in full

· The number of requests where the information was granted in part

· The number of requests where the information was withheld in full

· The number of requests where the information was not held

· The number of requests where the case was closed with advice and assistance provided

CAMPAIGN FOR FREEDOM OF INFORMATION

INTRODUCTION

This response relates to the Cabinet Office’s consultation over a proposal to issue a revised code of practice under section 45 of the Freedom of Information Act (FOIA). The new code would replace the current draft issued in November 2004, shortly before the Act came fully into force.

Although the draft code is said to provide guidance on ‘best practice’ under the Act we think it needs to go significantly further to justify that description. As it stands the proposed code:

• does not fully reflect changes in the interpretation of the Act resulting from Upper Tribunal and court decisions

• describes as ‘best practice’ some measures which are required under the Act, implying that these statutory requirements are optional

• is weaker in key respects that the 2004 version of the code it is intended to replace, omitting numerous helpful passages from it. The effect is to limit rather than extend the spread of good practice.

In our view the new code should be substantially improved before it is introduced.

1. RIGHT OF ACCESS

Requested information

Para 1.1 of the proposed code states that FOI applicants are entitled to have: 'information relating to the request communicated to them'. It would be more accurate to say that the right is to have the requested information communicated to them.

Form in which information is held

Para 1.2 states that by virtue of section 84 of FOIA the right of access is to 'recorded information held in any form, electronic or paper'. This should say 'including' electronic or paper. The right is not limited to electronic and paper records but includes information held in other formats including video tape, film, photographic negatives, microfiche, etc.

New information

Para 1.3 states that authorities 'are not required to create new information' to answer a request. This issue has been clarified by tribunal decisions which the code should reflect:

• the 'simple collation' of information which can be extracted from records held by an authority does not constitute the creation of new information

• the extraction of information from a database whether by running an existing 'report' or creating a new report also does not involve the creation of 'new' information.
Both points have featured in decisions of the First-tier Tribunal (FTT) subsequently endorsed by the Upper Tribunal and are now precedents binding on the Information Commissioner and FTT.

Appropriate access regime

Para 1.5 explains that the FOIA, the Environmental Information Regulations and the subject access provisions of the Data Protection Act are in effect mutually exclusive but adds: 'Sometimes it may be necessary to consider a request under more than one access regime.' Those statements may appear to conflict.

It may be clearer to say something like: 'Sometimes the response to a request may involve a combination of different types of information, each of which will need to be dealt with under the appropriate regime.'

Recorded information

Para 1.7 states:

'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.'

The reference to ‘correspondence’ appears misplaced. Correspondence is ‘recorded information’.

The above passage could also be taken to imply that requests for explanations, clarification or comments are not subject to the Act. It should be made clear that where such explanations can be found in recorded information they must be provided.

The guidance should make clear that information about an authority’s business held on mobile devices, including emails and messaging systems, is subject to the Act.

Private email accounts

The code fails to address the position of official information held in private email accounts. It should state that information about the public authority’s business may be ‘held’ by the authority for FOI purposes even if it is held by an official on their home computer, on a personal mobile device or in a private email account. This position is set out in the Information Commissioner’s guidance which states:

‘FOIA applies to official information held in private email accounts (and other media formats) when held on behalf of the public authority’

Having previously asserted that official information in their private email accounts was not subject to FOIA the Cabinet Office has since acknowledged the correct position, noting:

‘In exceptional circumstances, it may be necessary to ascertain whether there is Government information in an individual’s possession that is not accessible to Government’.

The correct position should be reflected in the code.

Information held on another person’s behalf

Paragraph 1.10 states ‘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.’

This should be amended to make clear that it is only true where information is held ‘solely’ on behalf of another person. If information is to any extent also held for the authority’s purposes, it is subject to the Act. These statements have been endorsed by the Upper Tribunal.

Deleted information

Paragraph 1.11 states that information which an authority has deleted but which is still available in electronic back up files ‘should generally be regarded as not being held’.

In fact, the FTT has in a number of cases held that back-up information was ‘held’ for the purposes of the FOIA. For example:

One request concerned an email sent to a US institution by a member of the Climate Research Unit at the University of East Anglia (UEA). The member of staff had

deleted the email from his personal computer. The FTT concluded that the email was likely to be held on a UEA back-up server. It found that 'it was a matter of common-sense that information backed-up onto a back- up server in the control of UEA, but deleted from the computer on which the original email was composed, was still 'held' by UEA.'

Request for information

Paragraph 1.15 states that authorities do not have to comply with a request that does not meet the section 8 requirements (that is, that an application should be in writing, provide a name and address and describe the requested information). It continues: 'It is good practice to write to the applicant and explain this if this is the case.'

This should not be described as 'good practice'. The failure to do so would be a breach of the statutory duty to advise and assist under section 16 of the Act. An authority is not free to simply ignore and discard a request because, say, the required information has not been adequately described.

Redaction costs

Paragraph 1.20 states that authorities can charge for the 'actual production expenses' of providing information and says these include the cost of 'redacting exempt information'.

We do not see any statutory basis for charging for redaction costs. The only charges permitted under regulation 6(2) of the fees regulations are those incurred in informing the applicant whether information is held and communicating the information to the applicant, and these must exclude any staff costs. Redaction is not part of either process.

Examples of the costs that can be charged are provided in regulation 6(3). These are the costs of:
'(a) complying with any obligation under section 11(1) of the 2000 Act as to the means or form of communicating the information,
(b) reproducing any document containing the information, and
(c) postage and other forms of transmitting the information.'

These are all examples of costs attributable to informing the applicant whether information is held or communicating the information. The redaction of exempt information does not fall into the pattern described by these examples.

Fees where the cost limit is exceeded

Paragraph 1.21 of the draft code deals with the fee that may be charged where an authority is prepared to supply information even though it is under no obligation to do so because the cost limit has been exceeded. The draft code states that in these circumstances the authority:

'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.'

This passage contradicts itself. It first states that charges can be made for staff time spent redacting information ('staff time is chargeable at a standard rate, including the

cost of making redactions') and then that such staff time cannot be charged for ('but only the physical cost of making redactions and not staff time').

Specifying software

Paragraph 1.24 states that authorities should aim to comply with the applicant's preference for the format in which access should be provided, for example where the applicant asks for information to be supplied in 'electronic or hard copy format'. The code should acknowledge that applicants are also entitled to specify the particular software format that should be used to provide electronic information: for example, Word, Excel or PDF.

This was established by a 2014 Court of Appeal judgment, Innes & Information Commissioner & Buckinghamshire County Council. The requester, Mr Innes, had asked for information to be provided as Excel spreadsheets. The council held the information in Excel but contrary to his preference supplied it as PDFs. The Court of Appeal held that if applicants expressed a preference for a specific software format the authority was required to provide it in that format, so long as it was reasonably practicable to do so.

The court's rationale must also mean that if an applicant expresses a preference for a hard copy in the form of a photocopy of a paper record, the authority must comply with that preference unless it is not reasonably practicable to do so. It does not have the option of supplying a print-out instead, unless it is not reasonably practicable to supply the photocopy.

2. ADVICE AND ASSISTANCE

Contact details

Paragraph 2.3 says authorities should 'as a matter of best practice' publish a postal address and email address for requests. We wonder why this mundane suggestion is described as 'best practice'. An authority which does not publish an address for requests is likely to be breaching its duty to provide reasonable advice and assistance.

Moreover, the draft code drops a provision from the existing code which recommends that:

'A telephone number should also be provided, where possible that of a named individual who can provide assistance.'

The Information Commissioner's guidance makes a similar recommendation. We think it should be reinstated.

Informing potential applicants of the Act

The draft code drops this passage from the existing code:

'Staff working in public authorities in contact with the public should bear in mind that not everyone will be aware of the Act, or Regulations made under it, and they will need where appropriate to draw these to the attention of potential applicants who appear unaware of them.'

This seems appropriate and should be retained.

Advice before a request is made

The duty to provide advice and assistance applies both to those who have made requests and those 'who propose' to do so. However, it is often difficult for applicants to obtain guidance from authorities before making a request. Where a request for advice is made in writing, it is sometimes treated as an FOI request in its own right, only to eventually be refused under an exemption. The code should encourage authorities to respond to informal requests for advice in an appropriate manner.

Citing the Act

Paragraph 2.4 rightly states that a request is valid even if it does not specifically mention the FOI Act. It goes on to say that where an authority receives a request for recorded information that complies with section 8(1) it should 'consider the request under the Act'.

The fact that section 8(1) has been complied with does not necessarily indicate an FOI request: it may be for environmental information or the applicant's personal information. The code should state that it is the authority's responsibility to identify and apply the correct regime. It should also draw attention to the parallel code of practice issued under regulation 16 of the Environmental Information Regulations.

We question the need for separate codes under the FOIA and EIR: it would be more sensible to publish a single code covering both regimes, as the Scottish Government has done.

Confirming the applicant's name

Paragraph 2.7 states that if the authority considers that an applicant has not provided their real name it can notify them that it will not respond to the request until their real name has been provided. We think the code should follow the equivalent Scottish Government code of practice in stating:

'The use of a surname plus a title (e.g. Mrs Jamieson) will generally be sufficient. There should be a presumption that any full name provided is genuine, unless there is a clear and demonstrable reason to believe otherwise.'

Clarifying a request

Paragraph 2.9 states that where an authority seeks clarification of a request, the 20 day response period will not start until clarification is provided. The code should make clear that under section 1(3) of the Act clarification must be 'reasonably' required. An unreasonable requirement to clarify a request which does not require clarification will not justify delay and may leave the authority in breach of the Act's time limits.

Seeking clarification promptly

A frequent complaint by applicants is that requests for clarification are not made until near the end of the 20 working day period. As the clock only starts once the clarified request has been received, a late request for clarification may cause significant delay.

The existing code addresses this is issue saying:

It is important that the applicant is contacted as soon as possible, preferably by telephone, fax or e-mail, where more information is needed to clarify what is sought.

The proposed code inexplicably drops this important recommendation. It should be reinstated.

Purpose of clarification

Another passage in the existing code which has been omitted states:

'Authorities should be aware that the aim of providing assistance is to clarify the nature of the information sought, not to determine the aims or motivation of the applicant. Care should be taken not to give the applicant the impression that he or she is obliged to disclose the nature of his or her interest as a precondition to exercising the rights of access, or that he or she will be treated differently if he or she does (or does not).'

This remains relevant and should be reinstated.

Advice and assistance when seeking clarification

The draft code drops the existing code's guidance on the advice and assistance that may be appropriate when seeking clarification of a request. The existing code suggests this might include:

• providing an outline of the different kinds of information which might meet the terms of the request;

• providing access to detailed catalogues and indexes, where these are available, to help the applicant ascertain the nature and extent of the information held by the authority;

• providing a general response to the request setting out options for further information which could be provided on request.'

These are helpful suggestions which should be retained or improved upon - not simply omitted.

Training

The draft code makes no reference to training and drops the existing passage from the foreword to the current code. This states that staff dealing with correspondence should recognise that a written request for information may be an FOI request; that staff should receive 'proper training' and that larger authorities should have staff with 'particular expertise' in FOI who can advise others when necessary.

An authority which allows untrained staff to deal with FOI requests is not following 'best practice'. The omitted passage should be reinstated and moved from the foreword (which is not technically part of the code) into the code itself.

The code should also reflect the provisions of the equivalent code in Scotland. This advises authorities to ensure that training is also provided for staff who cover for FOI staff during periods of absence or increased FOI workload, that specific training is provided for those carrying out internal reviews and that training is refreshed

regularly.

3. CONSULTATION WITH THIRD PARTIES

Suitable for disclosure

Paragraph 3.1 says that authorities may sometimes need to consult third parties in order to consider whether 'information is suitable for disclosure'. The term 'suitable' is not helpful as it may be taken to refer to the quality of the information. The purpose of consultation is to help the authority reach decisions on exemptions and the public interest.

Expert views

Paragraph 3.3 says:

'The expert view of a third party may, as long as it is reasonable, be helpful if the applicant appeals against any refusal.'

This is not an appropriate comment. The purpose of the code is not to help an authority defend its decisions from challenge but to encourage it to adopt best practice in complying with the Act. The value of a well-informed view from a third party is that it may help the authority reach the right decision on disclosure.

The use of the term 'expert' in the above passage is also questionable. The persons consulted will be those who have provided information to the authority or who may be affected by its disclosure. They may not be 'experts' even in relation to the impact of disclosure on their own affairs. Some may provide well-informed comments, others may make sweeping generalisations or, as the FTT said of the managing director of a major contractor, 'be rather partisan'.

4. TIME LIMITS FOR RESPONDING TO REQUEST

Ensuring time limits are met

The foreword to the proposed code states:

'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.'

Users often experience significant delays in responding to requests, which inevitably undermines faith in the Act. The code should stress the importance of adopting measures to ensure that this does not occur.

Measures should include:

• steps to ensure that staff or third parties who may need to be involved are consulted at an early stage and respond promptly

• the use of appropriate software to ensure that staff are aware of impending deadlines and take steps to ensure they are met the monitoring by the authority of its compliance with time limits, which should identify problems and lead to action to address them

• the publication of information about such problems and remedial action.

Promptly

Paragraph 4.1 describes the section 10(1) requirement that requests must be responded to 'promptly and within 20 working days'. However, it has nothing to say about the significance of 'promptly'. It should include the Upper Tribunal's observation that:

'Contrary to a common interpretation, the public authority is not given an entitlement to take 20 days to answer the request; the 20 day limit is intended as a long stop.'

Acknowledging requests

Neither the existing code nor the proposed code encourages authorities to acknowledge receipt of an FOI request. This is surprising as both advise that requests for internal review should be acknowledged.

The code should state that FOI requests should always be acknowledged. An applicant who has not received an acknowledgement within a few days of making the request would then have reason to question whether it had been received.

Public interest extensions

Section 10(3) of the Act states that a public interest extension is only available 'if, and to the extent that' a qualified exemption is engaged. The code should make clear that, if before the end of the 20 working day period, the authority has concluded that some of the requested information is not exempt that information should be disclosed - even if other information is still withheld pending the outcome of the public interest test.

We welcome the statement that a public interest extension should normally not exceed a further 20 working days.

Notification of a new deadline

Paragraph 4.7 states that authorities relying on the public interest extension should 'ideally' notify the applicant of the date by which they expect to be able to respond to the request. The word 'ideally' should be removed. Notification of the expected response date is a legal requirement under section 17(2) of the Act.

5. INTERNAL REVIEWS

Timescale for requesting internal review

Paragraph 5.3 states that a request for an internal review should be made within 40 working days of the authority's decision and that authorities 'are not obliged' to accept internal reviews after this date. The term 'not obliged' is misplaced. Authorities are not obliged to provide an internal review process at all, so there is no obligation from which they are freed after a particular deadline. This is an area which should be described in the language of good practice rather than requirements.

Form of request for internal review

The draft code omits the following from the existing code:

‘Any written reply from the applicant…expressing dissatisfaction with an authority's response to a request for information should be treated as a complaint’

This guidance is valuable and should be retained. It ensures that applicants who do not understand the FOI process nevertheless enjoy full rights under it. Applicants who may not even know of the Act’s existence may make a valid request if it satisfies the modest requirements of section 8(1). A written expression of dissatisfaction with the authority’s response, also made in ignorance of the Act’s requirements, is currently treated as triggering the internal review process – and should continue to do so.

This means that if an authority (i) fails to treat an initial valid request under the Act, then (ii) fails to notify the applicant of the right to internal review, and then (iii) fails to treat a written expression of dissatisfaction as a request for internal review, the applicant is free to complain to the Information Commissioner without further delay (if they then learn of the Commissioner’s role). That is a reasonable outcome, which prevents the authority from benefitting from its own mishandling of the request.

Person carrying out internal review

The draft code drops the existing code’s suggestion that an internal review:

‘should be undertaken by someone senior to the person who took the original decision, where this is reasonably practicable.’

Instead, the draft code merely says that internal review should, where possible, be carried out by someone other than the original decision taker. This implies that someone junior to the original decision taker may carry out the review (e.g. that an official may review a decision of their minister or chief executive). That does not seem sensible or likely to inspire public confidence. The omitted guidance permits flexibility (it only applies ‘where…reasonably practicable’) and should be reinstated.

6. COST LIMIT

We think this section of the proposed code, in particular, fails to give appropriate weight to the duty to advise and assist, and in this respect is significantly weaker than the existing code.

An indication of what information could be provided

The proposed code says that where a request is refused on cost grounds authorities:

‘should consider what advice and assistance could 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.’

However, it omits a significant provision in the existing code. This states that where the cost limit would be exceeded:

‘the authority should consider providing an indication of what, if any, information could be provided within the cost ceiling.’

That statement is an important benchmark, which has been quoted in over 120 decisions of the Information Commissioner and tribunals.31 There would need to be compelling justification for omitting it. None is given.

The Information Commissioner's guidance explains:

'Advising requestors to narrow their requests without indicating what information a public authority is able to provide within the limit, will often just result in requestors making new requests that still exceed the appropriate limit.'

Taken to extreme, the failure to provide advice and assistance may, in the FTT's words:

'Reduce…a citizen's right to request information to a game, which the citizen is forced to play blindfold with the public authority declining to say whether or not successive attempts are getting any closer to the target.'

Aggregating requests in relation to the cost limit

Paragraph 6.6 of the proposed code states:

'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.'

That is an incomplete account which does not describe good practice. It should not stand without a direct reference to the duty to advise and assist. The following points should be made:

• If answering one part of a request would exceed the cost limit, but other parts could be answered within the limit, the authority would be expected to tell the applicant this and identify the answerable parts.

• if the other parts of the request involve an unrelated subject, the cost of answering them cannot be aggregated with the cost of answering the first part. They would have to be answered unless their costs, on their own, exceeded the cost limit.

• where the authority could provide either one part of the requested information within the cost limit or another (but not both) it should say so and invite the applicant to indicate which, if either, they prefer to receive. It should not unilaterally disclose either, as this would deprive the applicant of the opportunity to exercise their own choice.

How the costs have been estimated

The Information Commissioner's guidance recommends that when refusing a request on cost grounds the authority should explain to the requester how its cost estimate has been reached. We think the code should do the same.

This would allow the requester:

• to judge whether the request was only slightly above the cost limit, in which case only a modest refinement might be needed to bring the request within the limit.

• to recognise that what they may regard as a non-essential aspect of the request is responsible for a disproportionate cost. Omitting it may solve the problem.

• to appreciate that the request is so far over the limit that only a wholesale revision of the request will have any chance of success at all.

• to appreciate that there is no realistic way of bringing the request within the cost limit at all, for example, because the information is held in so large a volume of unindexed records that no reformulated request will produce results of any value.

7. VEXATIOUS REQUESTS

Justification for the request

The proposed code sets out factors and circumstances that should be taken into account when considering whether a request is vexatious. Almost all of these tend to point towards a finding of vexatiousness. Although code lists 'the value or purpose of the request' as a relevant factor, its significance in light of the Upper Tribunal36 and Court of Appeal judgments in Dransfield is not properly acknowledged.

The essence of this approach is that while a request (or the latest in a series of requests) may impose a significant burden on an authority the request will only be vexatious if that burden is disproportionate in light of the value of the information sought. There should be an express statement along these lines.

Insofar as the draft code refers to any weighing of competing interests it does so in this awkward statement:

'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.'

We recognise the source and context of this observation but here it is out of context and imprecisely expressed. In any particular case, the public interest in disclosure may (depending on the facts) override any indication that the request is vexatious. The converse may equally be true. It would be more accurate to say neither set of factors automatically trumps the other.

The necessary balancing test is set out in the Information Commissioner's guidance:

'The key question to consider is whether the purpose and value of the request provides sufficient grounds to justify the distress, disruption or irritation that would be incurred by complying with that request. This should be judged as objectively as possible. In other words, would a reasonable person think that the purpose and value are enough to justify the impact on the authority.'

We suggest the code provide a similar explanation.

Examples of vexatiousness

Paragraph 7.9 of the code describes 'examples public authorities may want to use when considering whether a request is vexatious'. All three examples point towards a finding that the request is vexatious. No example indicating when a request may be justified is given.

The Commissioner's guidance, by contrast, provides examples of both outcomes. It notes that requests likely to be vexatious would include those where the burden is 'so grossly oppressive' that the authority cannot be expected to comply no matter how legitimate the subject; those making threats against employees or using racist language; and those where the requester has expressly stated an intention to disrupt

the authority's work.

But it also refers to cases why the burden might be justified because the authority's answers to a previous request have been contradictory, the requester is pursuing a legitimate grievance for which information is needed or the authority's publicised failings give genuine grounds for concern.

The code should adopt a similarly even-handed approach.

An issue already addressed

Paragraph 7.6 states that one factor that may be relevant in deciding whether a request is vexatious is whether the requester is 'unreasonably persisting in seeking information in relation to issues already addressed by the public authority?'

The question should not be whether the authority has 'addressed' the issue but whether it has been, as the Commissioner's guidance puts it, 'conclusively resolved' by the authority or 'subjected to some form of independent investigation'. The point of this provision is to consider whether disclosure would serve any purpose. There may well be a purpose where the decision is still open to challenge, whether by further complaint to the authority or to a regulator or at law.

Paragraph 7.14 suggests that section 14(1) (vexatious requests) should be considered when section 12 cannot apply 'for the reasons set out in paragraphs 7.10 to 7.11 above'.

This should presumably refer to paragraphs 7.12 to 7.13.

Refusal notice

Paragraph 7.17 states that if authorities consider that section 14 (vexatious or repeated requests) applies authorities should provide a refusal notice except in the circumstances referred to in paragraph 7.14. It is not clear why any of the circumstances referred to in that paragraph justify a refusal without a refusal notice.

Explaining why a request is vexatious

Paragraph 7.17 also states that where an authority considers that section 14 applies 'There is no obligation to explain why the request is vexatious'. We do not understand the rationale for this statement.

'Vexatious' is an emotive term, which will often appear inappropriate and offensive. It implies an adverse comment about the requester's character or conduct, not the request's workload implications - though workload is often the basis. Failing to explain why a request has been refused as vexatious is likely to be needlessly provocative. It is certainly not good practice.

To withhold an explanation:

• denies the requester the opportunity to revise a burdensome request to make it less demanding

• makes a reasoned challenge to the decision impossible

• is, prima facie, a breach of the duty to advise and assist.

(If the code is attempting to limit the scope of the duty to advise and assist, by including a statement which itself has quasi-legal force we think that is misguided.)

A request which is refused as because of its disproportionate burden is analogous to a request refused for exceeding the cost limit. The former may involve the number of hours required to redact exempt information; the latter the number of hours needed to search for information. Both cases should attract advice and assistance. In the vexatious case, the authority should explain why the request is considered so burdensome, advise on how it may be refocused and indicate what information could be provided without causing this burden. The duty to advise would still be qualified by the proviso that it need not be more than is 'reasonable' in the circumstances.

8. PUBLICATION SCHEMES

Statistics

We welcome the proposed recommendation in paragraphs 8.5 to 8.6 that larger authorities should publish their FOI statistics, and do so quarterly, in line with central government practice. Although the code is made under the FOI Act, we think it should recommend that publication should cover both FOI and EIR requests - as the central government statistics do.

In addition to the proposed statistics, the code should recommend that authorities should also publish:

• the length of time by which deadlines have been exceeded, where this has occurred

• the number of internal reviews completed within 20 working days and the length of time by which that target has been exceeded, where that has occurred

• the outcomes of internal reviews

• the number of times individual exemptions and sections 12 and 14 are used.
We think a template should be published, to encourage authorities to publish data in a standard and open data format.

Disclosure logs

The suggestion that authorities with over 100 staff should publish their compliance statistics is a response to the Burns Commission, which recommended that this should be required by law.

The Burns Commission also recommended that larger authorities should also be required by law to publish disclosure logs, showing all requests which have resulted in at least some disclosure together with the released information. We are disappointed that this significant recommendation has been dropped.

The Commission said:

'Answers to requests already are published where they are made through public websites like WhatDoTheyKnow.com, but we think that this should be the norm. We consider that this will have a number of benefits, such as helping requestors to obtain information which has in fact already been released without needing to make a

request, reducing unnecessary requests for information that has already been published, and allowing public authorities to avoid answering duplicate requests where they can simply point to information on their websites.'

The code should reflect that recommendation.

9. TRANSPARENCY AND CONFIDENTIALITY OBLIGATIONS IN CONTRACTS AND OUTSOURCED SERVICES

Paragraph 9.3 discusses the circumstances in which information will be held by a contractor 'on behalf' of a public authority and says they will include cases where the contract 'stipulates that certain information about service delivery is held on behalf of an authority for FOI purposes'

It is not necessary for the contract to state that the information is held on the authority's behalf 'for FOI purposes'. If the information is contractually available to the authority, it is held on its behalf, regardless of any reference to FOI.

For example, the FTT has held that the names of sub-contractors used by a contractor were held on the authority's behalf because:

'Clause 85 of the contract between the DRD [Department for Regional Development] and the main contractor confirms that the DRD could have insisted on provision of the names of the sub-contractors…the disputed information in this case was held by the main contractor on behalf of the DRD since they were required under the terms of the contract to seek approval of the subcontractors from the Public Authority'

In another case, the FTT held that requested information ('the Carillion report') was not held by the contractor ('Mercia') on the authority's behalf because:

'I am satisfied on the balance of probabilities… (i) that the Trust does not itself hold the Carillion Report; (ii) that the Agreement did not impose an express obligation on Mercia to disclose the Carillion Report to the Trust; (iii) that the relationship between the Trust and Mercia is not one of agency or partnership so as to impute knowledge from Mercia to the Trust; and (iv) that the Trust had no power within the terms of the Agreement to compel Mercia to provide it with a copy of the Carillion Report. For these reasons, I conclude that Mercia did not hold the Carillion Report on behalf of the Trust'

In neither case did the FTT consider that the test was whether the contract stated that it was held on the authority's behalf 'for FOI purposes'. The test was whether the authority had the contractual power to require the provision of the information for its own purposes. The code should make clear that that is the position.

10. COMMUNICATING WITH A REQUESTER

Paragraph 10.2 describes the information which an authority's initial response to a requester should provide. We repeat our earlier point, that the initial response should be an acknowledgement that the request has been received.

The second bullet point states that the authority's response should either confirm whether the requested information is held or provide 'a statement neither confirming nor denying whether information is held'. This should be amended to read: 'or, where the Act specifically permits, a statement neither confirming nor denying whether information is held'.

The third bullet point says authorities should provide details of their internal review process. They should also, at this stage, draw the requester's attention to the right to subsequently complain to the Information Commissioner. This is required under section 17(7) of the Act.

Paragraph 10.3 describes the information that should be provided when communicating the results of an internal review. This should include the identity and position of the person carrying out the internal review.

11. DATASETS

Open Government Licence

We have no specific comment on datasets. However, we think the code's encouragement for the use of the Open Government Licence should not be restricted to datasets. It should state that any information disclosed under the Act should, wherever possible, be disclosed under that licence.

Some FOI disclosures are still made subject to the condition that the information is only for the applicant's personal use and that any other use or any use which might involve commercial or financial gain can only take place with the authority's express permission. Recent examples include:

The number of recounts of votes cast in the June 2017 General Election in the Hastings and Rye constituency.

• The number of sightings of pumas, panthers and wild cats reported to Northumbria Police during 201, 2015 and 2016.

• The number of FOI complaints upheld by the Information Commissioner's Office against West Sussex County Council in the first 7 months of 2017 and the action taken by the council as a result.

• The results of a 2017 consultation exercise over a North Norfolk District Council proposal to create a Public Spaces Protection Order to control dogs. The requested information included the number of people supporting or opposing the proposed restriction in each area and the number complaining that the online consultation forms did not work.

The code should encourage authorities to routinely make FOI disclosures subject to the Open Government Licence, permitting the information to be reused without further reference to the authority, subject only the modest conditions which attach to that licence.

CANTERBURY CHRIST CHURCH UNIVERSITY

The University welcomes the revision of the Code. The existing Code is no longer fit for purpose. The University recommends a regular and periodic review, and revision where necessary, of the Code. Such a commitment could be usefully included in the Code.

The Code is accessible. There is appropriate references to the Act, and these are helpful in identifying the legal basis. It is evident thought was given to providing

direction that is practical in orientation, as well as providing a justifiable basis for action. A focus for further revisions might be to test the effectiveness of practicalities of the Code by survey what works in practice and what is insufficiently clear.

1. Is the guidance in chapter 1 of the Code clear and helpful for public authorities to understand the right of access to information in the FOI Act and how to manage requests on this basis?

Comment: This is a clear statement of the requirements of the Act. It acts as a useful guide, and has a practical orientation to it.

The relationship between the Code and advice provided by the ICO would benefit from further explanation. It is mentioned but not explained.

The way in which the Code might be used by the ICO and Tribunals would help clarify its status in legal terms. It would help explain what is meant by 'be desirable for [public authorities] to follow in connection with the discharge of the authorities' functions under Part I'.

Its nature is that it is principally of benefit for those regularly responding to request. It might be worth including a statement of benefit to the public at large.

2. Does the guidance about publication of FOI compliance statistics provide enough detail for public authorities to start publishing their own compliance statistics? If further guidance on this would be helpful what should this cover?

Comment: This is sufficiently clear for the University to publish compliance statistics from its working log. The demands on resource are not particularly great.

It would be worth separating out withheld information into three categories

(a) Withheld because the information was not held by the public authority
(b) Partially withheld due to an exemption
(c) Fully withheld due to an exemption

3. Is the guidance about the publication of information about senior pay and benefits clear and helpful? Are there any areas of this guidance where further detail would be useful?

Comment: The University considers the salary threshold should be £100,000 in line with the ICO definition document. The University considers that other than the Vice-Chancellor, the names of senior staff covered should not be published and general titles used.

It relation to expenses, hospitality received should be separated out from expenses as hospitality is not an expense. There should be a recommended lower level for hospitality set to avoid the need to include such matters as simple refreshments.

4. Does the proposed guidance on vexatious and repeated requests provide the right level of detail about the circumstances in which public authorities might want to consider using section 14? If further guidance on this would be useful what should this cover?

Comment: This is a particularly useful part of the Code. This section would be valuable in addressing such requests and justifying action.

5. Is it helpful to merge the datasets Code of Practice with the main section 45 Code so that statutory guidance under section 45 can be found in one place?

(See below comment.)

6. If you agree the datasets Code should be merged is it helpful to split the datasets guide into a section on release of datasets and a section on guidance on re-use of datasets?

Comment: The requirements relating to datasets are a technical part of the legislation. A single Code would be better than having two Codes, and the structure is appropriate.

However, the explanations are still rather technical and legalistic in nature and requires further simplification. It is the one section of the Code that would benefit from further development. This is taking account of the specialist nature of the Code.

CHANNEL 4

Channel 4 welcomes the opportunity to respond to the Cabinet Office consultation on revisions to the Freedom of Information (FOI) Code of Practice. Overall, we welcome many of the proposed revisions to the Code of Practice and believe it is both sufficiently detailed and clear. Within this response, we have therefore only sought to address areas of concern to Channel 4, notably some of the provisions within section 8 (Senior Executive Pay and Benefits) and Section 9 (Transparency and confidentiality obligations in contracts and outsourced services).

As a publicly-owned Statutory Corporation, Channel 4 takes its responsibilities under the Freedom of Information Act (FOIA) extremely seriously. We understand the importance of transparency and accountability amongst public authorities, particularly where this concerns the use of public funds.

However, Channel 4 is different from almost all other public authorities in respect of the FOIA – by virtue of both its editorial functions and its commercial funding. The FOIA already recognises the different position of Channel 4, as well as the other public service broadcasters covered by the Act (BBC, S4C and the Gaelic Media Service) by exempting information held for the purposes of journalism, art or literature. This means that the Act does not apply to material held for the purposes of creating Channel 4's content or material which supports and is closely associated with these creative activities.

The second distinction between Channel 4 and almost all other public authorities covered by the FOIA is that the Corporation, whilst publicly owned,, is entirely commercially funded and is not in receipt of any public money. On this basis and within the context of the extremely competitive commercial environment within which Channel 4 operates, it is vital that the FOI Code of Practice does not place duties on the Corporation that would cause Channel 4 to suffer a material competitive disadvantage.

We address these points in more detail below.

DISCLOSURE OF SENIOR EXECUTIVE PAY AND BENEFITS

Channel 4 supports the Government's intention to ensure transparency in regards to the remuneration of staff working within public authorities. Indeed, it is for this reason that we routinely publish comprehensive salary and benefits data for board level posts, total remuneration expenditure by department and a comparison between the highest paid employee and the mean average paid employee.

We believe that this approach satisfies the public interest, whilst at the same time protecting the commercial interests of the Corporation. However, given the unique circumstance of Channel 4, the benefits of going beyond this level of data disclosure would be far outweighed by the material damage that would result from releasing commercially sensitive information into the market.

Commercial roles

As an entirely commercially-funded organisation, Channel 4 employs a sales and commercial team whose role is to generate revenue in the market – primarily through the sale of TV and digital advertising. These individuals compete with a range of other commercial broadcasters, and increasingly, online and digital companies. This is a highly competitive sector, in which the disclosure of salaries – as proposed through the Revised Code of Practice - would put Channel 4 at a very significant disadvantage: not one single competitor has to publish the salaries of any of its sales staff.

We are therefore, concerned that the requirements set out in the Revised Code of Practice (sub sections 8.7-8.10) regarding the disclosure of Senior Executive Pay and Benefits would undermine Channel 4's ability to compete for and retain the best talent and subsequently, put the Corporation at a significant competitive disadvantage.

The routine publication of detailed salary and benefits data would increase the risk of Channel 4 employees being "poached" by private sector competitors and make it increasingly difficult for the Corporation to attract talent. Our direct competitors – including ITV and Sky Sales – would be handed a material competitive advantage over Channel 4 relevant to the attraction and retention of staff that are essential to the continuing success of the Corporation and its ability to deliver its statutory public service remit and other obligations.

Editorial roles

In line with the journalistic exemption provided under the FOI regime, we believe the same principle should apply in the case of the disclosure of pay and benefit information for staff involved in editorial matters. The exemption stems from the need for adherence to important principles about the independence of the media and in particular, public service broadcasters.

Taken together, we believe strongly that these examples serve to demonstrate why Channel 4's model places it in a category which can be reasonably differentiated from other public bodies which are in receipt of public funds. Both our editorial staff (in which we include commissioning editors, channel executives, as well as legal and finance staff involved in managing journalistic and editorial matter) *and* commercial teams should be exempt from pay and benefits disclosure requirements. This forms the large majority of Channel 4's staff base, and consequently we believe the most appropriate approach would be for Channel 4 to be exempt from these arrangements in full.

TRANSPARENCY AND CONFIDENTIALITY OBLIGATIONS IN CONTRACTS AND OUTSOURCED SERVICES

Channel 4 enters into contracts with a wide range of companies and we currently have around 400 ongoing contracts with third party suppliers (excluding programme contracts, which we consider to be outside the scope of the FOIA). The majority of these contracts, including Channel 4's non-disclosure agreements, contain detailed and robust provisions relating to Channel 4's FOIA obligations and the responsibility of contracting parties in this respect.

Whilst we support the intent behind Section 9 of the revised Code of Practice to provide greater transparency (Transparency and confidentiality obligations in contracts and outsourced services), we do not recognise some of the problems that these proposed provisions seek to redress. For example, we have not experienced any disputes with suppliers around the extent to which information is held by them on Channel 4's behalf. Nor have we ever reached an impasse with a supplier in the form of disagreements about disclosure. Our standard contractual terms make clear that information held on Channel 4's behalf by the supplier or their subcontractors should be provided promptly in the event of a request and that information held by the supplier or their contractors may be disclosed by Channel 4 in line with our obligations under the Act.

In addition, we also have concerns regarding the practicality of implementing some of the provisions in Section 9. In particular, we consider that the requirement set out in subsection 9.9 to be overly onerous. For an organisation such as Channel 4 with a large number of contracts, revisiting *all* existing contracts to issue Memoranda of Understanding or equivalent to cover all of the new proposed provisions would impose an unnecessary burden.

Furthermore, we consider that a blanket requirement to incorporate all of the suggested provisions in all of our contracts in future is likely to impose, in many cases, an unnecessary burden. In both cases, we would envisage that the obligation would require extensive resources to be directed at contract negotiations or amendments, which would otherwise be better employed elsewhere.

Channel 4 believes that public authorities should be afforded some autonomy and greater flexibility in regards to the suggested provisions outlined within section 9 of the Code of Practice to adopt.

Public authorities should also have the flexibility to assess the appropriacy of their inclusion within contracts on a case-by-case basis. This would, for example, enable public authorities to consider the extent to which information is held by a contracting authority on their behalf may already be adequately incorporated elsewhere in contract by way, for example, of intellectual property clauses. We consider that this flexibility would allow public authorities to most effectively allocate resources and prevent contract negotiations and the drafting process from becoming unnecessarily onerous and burdensome.

CHARITY COMMISSION

1. Is the guidance in chapter 1 of the Code clear and helpful for public authorities to understand the right of access to information in the FOI Act and how to manage requests on this basis? Are there any other areas where it would be helpful for this guidance to be more detailed or where it could be clearer?

Yes, we consider the guidance in this area clear and helpful.

2. Does the guidance about publication of FOI compliance statistics provide enough detail for public authorities to start publishing their own compliance statistics? If further guidance on this would be helpful what should this cover?

We believe that there is sufficient information within the draft code to inform how we publish compliance statistics.

3. Is the guidance about the publication of information about senior pay and benefits clear and helpful? Are there any areas of this guidance where further detail would be useful?

We would like to raise a query regarding the rationale for the threshold for publishing salary information given that a different threshold is in the Regulations applicable for local authorities and other public entities (The Accounts and Audit (Amendment no 2) (England) Regulations 2009). In the draft code it is stated that £90,000 is the threshold, which differs from the £50,000 set out in the Regulations.

4. Does the proposed guidance on vexatious and repeated requests provide the right level of detail about the circumstances in which public authorities might want to consider using section 14? If further guidance on this would be useful what should this cover?

We are satisfied with the level of detail which exists in the draft Code.

5. Is it helpful to merge the datasets Code of Practice with the main section 45 Code so that statutory guidance under section 45 can be found in one place?

We have no preference on this point. We find the Datasets Code easy to locate but would not object to a merger of the Codes.

6. If you agree the datasets Code should be merged is it helpful to split the datasets guide into a section on release of datasets and a section on guidance on re-use of datasets?

No comment

7. Are there any other areas in Part I of the Act where it would be helpful to have additional guidance in the Code? If so, what do you think the additional guidance should cover and why?

We have the following additional comments to make which are noted in reference to the relevant section of the draft code.

5.1 In this section it is stated that "*…complaints will usually be dealt with as a request for an "internal review" of the original decision*". Whilst complaints about an FOI decision are the most common form of complaint received relating to FOIs, they may also constitute complaints about handling i.e. if there was undue delay in disclosing a response. We would welcome further clarity as to the extent to which an internal review should cover both complaints into handling and/or the decision review, and also whether it can be considered that an expression of dis-satisfaction is grounds for an internal review in itself, if the internal review request should be stated explicitly in the correspondence, or if this is something that can be at the discretion of the public

authority's own procedures.

5.8 It is stated that "*The internal review procedure should provide a fair and thorough review of procedures and decisions taken in relation to the Act.*" In view of the comments on 5.1 above, should it be inferred that both handling of the request and the decision reached on disclosure should be taken into account for each internal review? Previous advice from the ICO has been that only the issue raised by the applicant should be considered as part of the review (i.e. if the application of an exemption is the focus of the complaint, then this is the part of the request which is reviewed). Again, we believe some clarity in this area would be helpful.

CRAVEN DISTRICT COUNCIL

I have only a couple of comments, one minor, the other more important.

Para 1.5, the reference to the Data Protection Act will need to be amended in the light of the data protection reforms, I suggest that it reads ' Data Protection Act 1998 or 2018 as appropriate'.

Para 8.5, I am writing from a smaller local authority, though with more than 100 employees. At present we collect and can publish all the items in the bullet points apart from details of the numbers of requests where information was granted, and the number of requests that were withheld. This is because the data on the timeliness and other information is collected by non-specialised administrative staff. So to include these two points will increase the administrative burden for public authorities at a particularly difficult time when we are trying to cope with the introduction of the GDPR and the new Data Protection Act.

But I am requesting that these two items are not included as mandatory for publication otherwise.

Also this begs the question that if a requester is referred to information already in the public domain, while this counts as a technical refusal under the FoIA, it isn't really a refusal to disclose as the information is already reasonably accessible. So I guess that the definition will be open to interpretation. there needs to be some clarification of this so as to ensure consistency.

CRONDAL PARISH COUNCIL

Question 1:

At section 1.11 of the draft Code it is stated that information which has been deleted from the public authority's records prior to any FOI request, yet which still exists in electronic back-up files is not 'held' information. A clarification of the apparent difference between 'records' and 'back-up files' would be much more helpful than providing a cross-reference to a different Code.

At section 1.22 of the draft Code it would be helpful to provide example(s) of where Public Authorities can charge higher fees than permitted under the FOI Act when providing information on a different statutory basis.

At sections 4.4 – 4.7 of the draft Code there is some discussion of the circumstances in which the 20 working days deadline for responding to a FOI request may be

extended under a 'public interest test'. It is suggested that a good example of when a public interest arises is in the case of small Parish Councils, typically with (at best) a part-time Clerk and perhaps half a dozen or so unpaid Parish Councillors, meeting infrequently. In such circumstances (far from uncommon among the 10,000 or so Parish Councils in England) the disruption to the Parish Council's (and Councillors') business in seeking to meet what is in any event a tight timetable is likely to seriously and adversely affect its performance of its other obligations to its community. It is suggested that, for Parish Councils with an annual Precept of less than £100,000 in the year in which a FOI request is made, the public interest test should be deemed to be triggered to allow a *30* working day time limit for responding to FOI request.

At section 5 of the draft Code, it would be helpful if it was made clear that, whether or not it is best practice, a Public Authority is not statutorily obliged to have an 'internal review procedure' (which for many small Parish Councils is impracticable, particularly given the further 'best practice' set out at section 5.9 of the draft Code)

Question 2:

At section 8.5 of the draft Code of Conduct it is stated that Public Authorities with over 100 FTE employees 'should, as a matter of best practice', publish FOI statistics on a quarterly basis. It would be helpful if this could be clarified – where, on the spectrum between 'may' and 'must' does 'should' sit?

Question 3:

See Question 2 above concerning the word 'should'.

Question 4:

At section 7.5 et seq of the draft Code, it is very helpful that the point is made that 'vexatious' does not only apply to the motive of the requester but also to "the burden it places on a public authority and its staff". However, it is suggested that this guidance should be extended to explicitly state that 'burden' should be judged in the light of a Public Authority's size and resources: what may be a minor irritant to a large Public Authority could be a crippling diversion of limited resources for a small one.

Questions 5 and 6:

No comment

Question 7:

At section 6.2 of the draft Code reference is made to the 'cost limit' of £450 (18 hours at £25 per hour) for all Public Authorities other than central government departments. For very many Parish Councils, this is equivalent to anything from several full days to well over a full week of a Clerk's time. Although it is appreciated that the 'cost limit' is set by Statutory Instrument, it is strongly recommended that the government be persuaded, at the next review, to set a lower limit (say, £250) for Parish Councils with a Precept of less than £100,000.

DISTRICT COUNCILS' NETWORK

The DCN welcomes the opportunity to respond to this consultation paper. We have set out below our detailed responses to the consultation questions.

Some of the changes to the guidance seek to impose additional burdens on councils and we believe therefore that the new burdens doctrine is triggered: the Cabinet Office needs to consult local government on the financial impact and provide additional resources before proceeding with implementing changes to the code. The Code does not generally apply to the private sector and, while it would apply to a range of public bodies, we believe that councils are likely to be subject to far more requests proportionately than national or regional public bodies because of their more local nature. Also frequent national media requests seek to obtain information from all councils in order to produce analysis of the national position, or to contrast the position between different councils.

Without additional funding to recognise the burdens imposed by changes to the code, councils may struggle to comply with the revised code. This comes at a time when district councils in particular are under severe financial pressure after several years of significant reductions in Government funding as a result of austerity and additional resources have had to be deployed to comply with the implementation of major changes to data protection legislation in May this year.

Question 1: Is the guidance in chapter 1 of the Code clear and helpful for public authorities to understand the right of access to information in the FOI Act and how to manage requests on this basis? Are there any other areas where it would be helpful for this guidance to be more detailed or where it could be clearer?

We believe that the revised draft guidance is generally clear and helpful in ensuring that councils and their employees understand the right of access to information under the FOI legislation and how to manage day to day requests.

In our view, the guidance in paragraph 1.21 about charging for the physical cost of making redactions conflicts with the guidance that staff time may not be charged where the cost of compliance falls below the cost limit. It is difficult to conceive of circumstances where the cost of making redactions will be anything other than staff time (costs of paper, ink, photocopying etc are already covered). We would suggest a change of approach here and in paragraph 6.4 so that the cost of making redactions (which will be wholly or almost wholly staff time) is counted towards the cost of responding to a request and therefore affects whether or not the cost limit is exceeded. For simple requests, that involve only limited work on redactions, this will not affect the ability of individuals to obtain information for free. However, many cases that require redactions can involve very extensive amounts of work to make the redactions within large documents or files.

Against the backdrop of public austerity, it no longer seems reasonable that councils are required to bear such costs. There are legitimate reasons why redactions can and should be made. We appreciate that the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 do not explicitly mention redaction in regulation 4(3). However the process of redacting sections of a document seems to us to involve “extracting information from a document containing it” in order for the information to be disclosed. We would welcome a change of approach by the Government, if necessary by amending the 2004 Regulations as well.

It would be helpful if paragraph 1.26 was changed to state that, where the request has been submitted by email or other electronic method that allows a response to be

given by those means, or if the requester has provided an email address (e.g. even if the request has been made in a letter), it is reasonable to provide a response solely by electronic means even if the requester has asked for paper copies. Given the drive for digital services and the need to keep costs down against the backdrop of austerity, it is no longer acceptable that people who have access to electronic or digital means of communication should expect to have a preference for paper responses respected.

Question 2: Does the guidance about publication of FOI compliance statistics provide enough detail for public authorities to start publishing their own compliance statistics? If further guidance on this would be helpful what should this cover?

We oppose the proposed addition of section 8 to the guidance. This is not because we believe that councils should not publish FoI compliance statistics: many district councils do so.

Our objection relates to whether the Minister has vires under section 45(2) of the 2000 Act to require public bodies to publish these statistics. The draft code explicitly states in paragraph 8.4 that it "provides more specific guidance on two areas to supplement the existing guidance by the Information Commissioner's Office" and paragraph 8.6 states that "publication schemes are likely to form the best vehicle for publishing this information". With respect, the Minister does not have powers to specify what must be in publication schemes or to issue guidance about the content of publication schemes. Those powers are vested solely in the Information Commissioner under sections 19 and 20, including the Commissioner's powers to approve publication schemes and to issue model publication schemes.

We acknowledge that the Minister in the code can give guidance about the disclosure of datasets. However there is no drafting in section 8 of the draft code that suggests that the compliance statistics are datasets. And even if they were datasets, then the proper place for guidance about them is in the guidance on datasets that is to be merged with the code (question 5).

Not all district councils publish FoI compliance statistics now, and they are not required or recommended to do so by the model publication scheme or the Information Commissioner's definition document for principal local authorities (version 3.1). Thus, if the Government goes ahead with its proposal despite our misgivings about the vires as set out above, this establishes that a new burden is being created which needs to be assessed in accordance with the new burdens doctrine.

Question 3: Is the guidance about the publication of information about senior pay and benefits clear and helpful? Are there any areas of this guidance where further detail would be useful?

Our concerns about the vires of the proposed section 8 of the code are set out above and apply equally to this provision.

Our concerns are enhanced because:

1) The Information Commissioner's definition document for principal local authorities addresses senior salaries and refers to publication of salaries above £58,200. It bases this on the (now rescinded) Code of Recommended Practice on Data Transparency which was withdrawn in May 2014;

2) There is a plethora of overlapping and in some cases conflicting requirements for publication of this information, including the Transparency Code issued under the Local Government, Planning and Land Act 1980 and the Accounts and Audit Regulations 2015, not to mention pay policy statements under section 38 of the Localism Act 2011. The proposed guidance (even if intra vires) does not make clear whether councils are to follow only the Transparency Code or this Code – the final sentence of 8.10 might be read as applying only to salary information. The Transparency Code deals only with salaries, bonuses and benefits in kind, but not expenses; whereas the latter are covered by the pay policy statement and the Information Commissioner's definition document. The confusion and complexity is analysed further in the annex to this response. For this reason alone, we would urge either that it is stated clearly that paragraphs 8.7 to 8.10 do not apply to local authorities or that any provision made is fully consistent with extant regimes and does not add new or different requirements (as any additional requirements would constitute a new burden to be assessed under the new burdens doctrine);

3) Differential regimes are proposed for councils compared to other public bodies. Notwithstanding the points made in paragraph (2) above, if there is to be guidance in this code about publishing data on senior pay then the same regime should apply to all public bodies. It is not acceptable that other public bodies commence disclosure for senior posts at £90k when councils have to disclose at a lower level.

Question 4: Does the proposed guidance on vexatious and repeated requests provide the right level of detail about the circumstances in which public authorities might want to consider using section 14? If further guidance on this would be useful what should this cover?

We are grateful for the additional guidance provided in respect of vexatious requests, which the FOI Commission quite rightly raised as a major issue for public authorities, including district councils.

Question 5: Is it helpful to merge the datasets Code of Practice with the main section 45 Code so that statutory guidance under section 45 can be found in one place?

Yes. It is sensible to merge the guidance on datasets with the main guidance issued under section 45 of the Act, since it has been issued under the same power. It is important that the guidance on datasets is "stripped back" to those that remain covered by the Freedom of Information Act.

Question 6: If you agree the datasets Code should be merged is it helpful to split the datasets guide into a section on release of datasets and a section on guidance on re-use of datasets?

Yes. We would support the idea of splitting the datasets guidance into a section on release of datasets and a section on guidance for the re-use of datasets.

Question 7: Are there any other areas in Part I of the Act where it would be helpful to have additional guidance in the Code? If so, what do you think the additional guidance should cover and why?

We would not support any additional guidance that added to demands on and costs for councils.

In paragraph 4.7, "text" should be "test".

EAST LINDSAY DISTRICT COUNCIL

1. Is the guidance in chapter 1 of the Code clear and helpful for public authorities to understand the right of access to information in the FOI Act and how to manage requests on this basis?

Yes the Guidance is clear.

Are there any other areas where it would be helpful for this guidance to be more detailed or where it could be clearer?

No.

2. Does the guidance about publication of FOI compliance statistics provide enough detail for public authorities to start publishing their own compliance statistics?

Yes – we already publish quarterly compliance statistics and a log of FOI requests received on our website.

If further guidance on this would be helpful what should this cover?
N/A

3. Is the guidance about the publication of information about senior pay and benefits clear and helpful?

Yes – again we already publish this data.

Are there any areas of this guidance where further detail would be useful? N/A

4. Does the proposed guidance on vexatious and repeated requests provide the right level of detail about the circumstances in which public authorities might want to consider using section 14?

Yes – sufficient guidance to make a reasoned decision.

If further guidance on this would be useful what should this cover?

N/A

5. Is it helpful to merge the datasets Code of Practice with the main section 45 Code so that statutory guidance under section 45 can be found in one place?

Yes

6. If you agree the datasets Code should be merged is it helpful to split the datasets guide into a section on release of datasets and a section on guidance on re-use of datasets?

Yes

7. Are there any other areas in Part I of the Act where it would be helpful to have additional guidance in the Code? If so, what do you think the additional guidance should cover and why?

No

EAST RIDING OF YORKSHIRE COUNCIL

There is one comment that I would wish to make in relation to -

3. Is the guidance about the publication of information about senior pay and benefits clear and helpful? Are there any areas of this guidance where further details would be useful?

The answer to this is not entirely. I am unclear as to what is mean by ' hospitality ' and depending upon the answer to that question why this is expected to be recorded under senior pay and benefits. I think many local government officers would understand ' hospitality ' to mean hospitality offered by third parties. If this is what is being referred to I would question why it is expected to be recorded under information about senior pay and benefits. Hospitality of this type is not provided to an employee by their employer therefore I cannot see how it can be seen to be part of the pay and benefits provided to employees which by definition has to be provided by their employer. In addition the extent to which it is offered and by whom is entirely outside the control of the employer or the employee. Therefore what is expected to be achieved by it being recorded under this heading? It is entirely misleading.

FINANCIAL CONDUCT AUTHORITY

Disclosure of senior salaries

This part of our response is specifically in relation to section 8 ‘Publication Schemes’, sub sections 8.7 – 8.10 ‘Senior Executive Pay & Benefits’. This is the focus of question 3 of the ‘Summary of Questions’.

“Q3. Is the guidance about the publication of information about senior pay and benefits clear and helpful? Are there any areas of this guidance where further detail would be useful?

We believe that transparency helps financial regulators to be as open and accountable as possible, so that we can be scrutinised by a range of stakeholders including consumers, firms and Parliament. We recognise that delivering sufficient transparency about the salary and benefits of senior officials is part of this.
In reflecting on the consultation we believe we should extend named disclosure to all members of the top management board.

Below this, we believe we should also disclose the number of individuals who receive salary and benefits within appropriately sized monetary bands e.g. incremental bands of £20,000. This would cover senior officials at Director level within the organisation.

We do not wish to disclose named and more detailed individual information at these lower levels for a number of reasons as set out here:

· We need to recruit and retain employees in direct competition with the private sector who are not subject to the same rules, creating an information imbalance and making it harder to recruit and retain people.

· Our salary ranges for each grade level are typically wider than those found in organisations such as the Civil Service leading to a greater level of impact for our employees.

· Within the total remuneration individuals receive, there is an element of individual performance that is reflected primarily in annual incentive scheme payments, leading to disclosure of personal performance data. As an employer, we have to take into account the privacy interests of our employees.

· There is no expectation among our employees that personal remuneration or performance information will be made public.

Compliance statistics

Paragraph 8.5 of the draft Code says that public authorities (with over 100 FTE) should publish details of their performance in handling requests for information under the Act on a quarterly basis. The information should include:

• Number of requests received

• Timeliness of responses 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

The FCA already publishes this type of information annually within its Annual Report: https://www.fca.org.uk/publications/annual-reports/our-annual-report-2016-17

We also provide some limited information in the published half yearly Service Standards submission, which details the number of requests responded to and the timeliness of the response: https://www.fca.org.uk/publication/corporate/service-standards-may-2017.pdf

To publish information quarterly will have resource implications for public authorities and we query whether the diversion of resources in compiling the statistics will result in enhanced performance by public authorities. We would suggest that a six monthly interval strikes a better balance.

GATESHEAD COUNCIL

In response to the consultation our responses are below:-

1.The guidance is very clear and helpful

2.The guidance does provide enough detail, but most local authorities publish this information already via overview and scrutiny reports annually to elected members detailing how many requests have been received and how many were dealt with within timescale. How public authorities publish the data should be a decision left to them so that there is no duplication as to existing methods of publication.

3. The guidance about publication of information for senior officers duplicates what is already contained in the transparency guidance, so does not need to be contained in this guidance.

4.The guidance provides good examples of when it is appropriate to treat requests as vexatious. The only additional information which may assist organisations is guidance about how to deal with requestors who ask for an online survey to be completed.

5.It is helpful to merge the datasets code of practice into this code of practice.

6.It would be helpful to have a specific section about datasets and a section on re-use.

7.The guidance is clear and does not require any additional guidance.

GENERAL MEDICAL COUNCIL

1. Is the guidance in chapter 1 of the Code clear and helpful for public authorities to understand the right of access to information in the FOI Act and how to manage requests on this basis?

   Yes this is clear and helpful.

   Are there any other areas where it would be helpful for this guidance to be more detailed or where it could be clearer?

   n/a

2. Does the guidance about publication of FOI compliance statistics provide enough detail for public authorities to start publishing their own compliance statistics? If further guidance on this would be helpful what should this cover?

   No further guidance would be required.

3. Is the guidance about the publication of information about senior pay and benefits clear and helpful? Are there any areas of this guidance where further detail would be useful?

   The guidance is sufficiently clear.

4. Does the proposed guidance on vexatious and repeated requests provide the right level of detail about the circumstances in which public authorities might want to consider using section 14? If further guidance on this would be useful what should this cover?

   This is particularly helpful as it will assist in explaining our approach to refusing requests.

5. Is it helpful to merge the datasets Code of Practice with the main section 45 Code so that statutory guidance under section 45 can be found in one place?

Yes

6. If you agree the datasets Code should be merged is it helpful to split the datasets guide into a section on release of datasets and a section on guidance on re-use of datasets?

   Yes

7. Are there any other areas in Part I of the Act where it would be helpful to have additional guidance in the Code? If so, what do you think the additional guidance should cover and why?

   n/a

HAMPSHIRE ASSOCIATION OF LOCAL COUNCILS

1. I found the guidance in Chapter 1 to be very clear and helpful.

2. The guidance item 8.5 states Public Authorities with over 100 FTE Employees, should, as it is considered best practise, to publish details of their performance. It is then stated in item 8.6 that ALL Public Authorities should publish statistics on a quarterly basis. It is either a stipulation within the legislation for all Public Authorities to publish their performance or only those with over 100 FTE Employees. The two items make this contradictory as to whether you are stipulating that statistics must be published by all or only those with over 100 FTE Employees.

3. 8.9 stipulates that the names and job titles must be published along with salary and benefits information. Under the new GDPR regulations it must be made clear that an employer has obtained consent from the employee to process their data. If the employee does not consent to this, would the publishing of senior level staff's salary details with names and job titles be in breach of the GDPR?

4. I found the guidance on vexatious and repeated requested to be a good source of reference.

5. Although it would be helpful to merge the datasheets to be found in one place, it would also be an ease of reference to spilt the datasheets guide into a section on release of datasheets and a section on guidance on reuse of datasheets.

6. As 5

7. I found the Code of Practice to be informative, and would become a useful resource to refer to within my role.

HERTFORDSHIRE COUNTY COUNCIL

The County Councils response to the consultation is below:

1. Is the guidance in chapter 1 of the Code clear and helpful for public authorities to understand the right of access to information in the FOI Act and

how to manage requests on this basis? Are there any other areas where it would be helpful for this guidance to be more detailed or where it could be clearer?

The guidance has been up dated to meet the requirements of a Public Authority operating within cloud based systems and where requests can be received across a variety of different social media mediums. This will enable a better determination in relation to information being held.

2. Does the guidance about publication of FOI compliance statistics provide enough detail for public authorities to start publishing their own compliance statistics? If further guidance on this would be helpful what should this cover?

Hertfordshire County Council is committed to being transparent and accountable. It is considered that the publication of compliance statistics is fundamental to the successful ongoing fulfilment of the Freedom of Information ethos and will enable the public to challenge how this service is delivered.

3. Is the guidance about the publication of information about senior pay and benefits clear and helpful? Are there any areas of this guidance where further detail would be useful?

In line with the County Councils obligation under the Local Government Transparency Code, we already proactively publish information concerning the salaries of senior staff and any benefits in kind that are received in line with their role.

However the proposed guidance on this matter is confusing. It would be better if all organisations that are subject to the Act had the same reporting requirements and clearly defined instructions.

4. Does the proposed guidance on vexatious and repeated requests provide the right level of detail about the circumstances in which public authorities might want to consider using section 14? If further guidance on this would be useful what should this cover?

The proposed guidance on vexatious and repeated requests does contain the correct level of details that would assist the County Council if considering a refusal based on these grounds. The examples provided are useful to assist with this deliberation.

5. Is it helpful to merge the datasets Code of Practice with the main section 45 Code so that statutory guidance under section 45 can be found in one place?

The use of datasets is becoming more common place in responding to information requests and in meeting the County Councils responsibility to have a fully functioning publication scheme. Due to this overlap, the merger of this information is useful.

6. If you agree the datasets Code should be merged is it helpful to split the datasets guide into a section on release of datasets and a section on guidance on re-use of datasets?

It would be of significant assistance when dealing with datasets, if there was a clear difference between the information offered concerning the release and the re-use of this information.

7. Are there any other areas in Part I of the Act where it would be helpful to have additional guidance in the Code? If so, what do you think the additional guidance should cover and why?

No, this proposed Code offers a more user friendly and updated guidance.

HM LAND REGISTRY

1. Is the guidance in chapter 1 of the Code clear and helpful for public authorities to understand the right of access to information in the FOI Act and how to manage requests on this basis? Are there any other areas where it would be helpful for this guidance to be more detailed or where it could be clearer?

Information held

1.9 – With regard to the comment on information provided to lawyers for the purpose of litigation, the code of practice could clarify that this does not extend to "without prejudice" information or information held in connection with criminal proceedings.

Valid requests

1.16 –The guidance could clarify when a request can be deemed to have been received through "social media". What is "social media" for the purposes of the code of practice? Is it the "social media" that the public authority publishes that it interacts with or any social media?

By way of general comments, the code of practice could clarify that a FOI request does not oblige a public authority to explain its practices and procedures (for example, explaining the general boundaries rule) in its response and that if it chooses to do so, it should make clear that it does not form part of the response to the FOI request. The code of practice could stipulate that the reply should make clear what part of the reply is given for the purpose of the FOI Act and that which is not. Clarification is required as to what amounts to data that is deemed to be held by a public authority and must be released in a required format. While a public authority may have the information requested, it may involve processing to extract it – does this still have to be released even though such processing is not carried out as part of the public authority's normal business? Further guidance is also required with regard to large or bulk datasets where these are held in, for example, pdf format – does the public authority have to process these to issue in an electronic format for the requestor?

2. Does the guidance about publication of FOI compliance statistics provide enough detail for public authorities to start publishing their own compliance statistics? If further guidance on this would be helpful what should this cover?

No comments.

3. Is the guidance about the publication of information about senior pay and benefits clear and helpful? Are there any areas of this guidance where further detail would be useful?

More clarity as to the actual grade at which a public employee's pay and benefits would be useful.

4. Does the proposed guidance on vexatious and repeated requests provide the right level of detail about the circumstances in which public authorities might want to consider using section 14? If further guidance on this would be useful what should this cover?

We would suggest further guidance, with examples, as to what would be considered to be a vexatious request and the circumstances when a public authority should use this as the ground for refusal and clarity over the public authority's right to ignore any further response from the requestors after a letter of refusal has been issued on this basis.

5. Is it helpful to merge the datasets Code of Practice with the main section 45 Code so that statutory guidance under section 45 can be found in one place?

Yes.

6. If you agree the datasets Code should be merged is it helpful to split the datasets guide into a section on release of datasets and a section on guidance on re-use of datasets?

Yes.

7. Are there any other areas in Part I of the Act where it would be helpful to have additional guidance in the Code? If so, what do you think the additional guidance should cover and why?

Further guidance would be helpful:

1) on whether a public authority is required to address environmental regulations information as well as FOI issues on an FOI request only and
2) on the interaction of the re-use of data regulations with FOIA.

INFORMATION COMMISSIONER'S OFFICE

The ICO also welcomes the Government's expression of its continued commitment to proactive transparency by the public sector, as evidenced in the draft Code. This builds on the recommendations in the report of the Independent Commission on Freedom of Information.

Overview

The draft Code is now much more comprehensive than its predecessor. We commented in 2016 that there is a risk, in making it more detailed, that the Code might become out of date as new court judgments are made and interpretations of the Act evolve.

Since we aim to keep our website guidance on the Act up to date with these changes, we suggest that public authorities might find it helpful for the Code to include a prominent link to the guidance section of the ICO website as a further source of guidance about the Act.

Questions

For clarity and ease of reference, we have set out our comments below in response to each question and in relation to each chapter, together.

Right of Access – Chapter 1

Question 1:

Is the guidance in chapter 1 of the Code clear and helpful for public authorities to understand the right of access to information in the FOI Act and how to manage requests on this basis?

Partially.

Chapter 1 would benefit from a link to the guidance section of the ICO website as a source of more detailed guidance on the right of access to information.

We have recommended some changes to wording.

Amendments to wording

Chapter 1 is mostly clear but contains some inaccuracies that we have highlighted in our detailed comments on the draft Code itself. Please read those comments in conjunction with this response.

There is a risk that, left uncorrected, these would mislead public authorities about the requirements of the Act and of the Code.

For example:

- certain obligations under the Act still apply even when, for instance, information is not held. A public authority must therefore respond to the requester even when it does not hold information, stating that fact (or citing an exemption if the duty to confirm or deny does not apply) (eg para. 1.8);
- what constitutes a valid request (eg 1.7);
- what is recorded information (1.7); and
- whether information is held by a public authority:
    - an authority may still "hold" information that is political or personal, for instance (1.10)
    - an authority does not hold information for the purposes of the Act if it holds it solely on behalf of another (1.10);
    - deleted information held as a backup is still held (1.11).

GDPR and Data Protection Bill

Para. 1.5 refers to the Data Protection Act 1998; depending on the envisaged date for publishing the Code, we recommend that consideration be given to updating this to reflect the GDPR which will take effect from 25th May, as well as the requirements of the Data Protection Bill.

Use of social media when making a request

We recommend that the Code does not limit valid addresses to postal, email and twitter addresses, since requests via other forms of social media may also be valid. It is preferable to ensure the Code is future-proof from a technological advancement perspective for as long as possible.

Since the use of social media to make requests might increase, and other platforms might emerge, it would be helpful to provide public authorities with more guidance on it in the Code.

Are there any other areas where it would be helpful for this guidance to be more detailed or where it could be clearer?

Yes; as outlined above and in our comments on the draft Code document.

We note that the draft Code does not provide guidance on matters of form and format (s.11 of the Act). We suggest that you might like to consider doing so in this chapter and/or elsewhere (eg the chapter on advice and assistance; see below).

We have also commented on the other chapters of the Code.

Chapter 2 Advice and assistance

Section 16(2) of the Act states that any authority which provides advice and assistance that conforms with the s45 code of practice is taken to have complied with the section 16(1) duty to provide advice and assistance. The Code should therefore be as comprehensive as possible on this topic. We suggest that it might also be useful to public authorities for the Code to provide a link to our guidance on this subject.

Also, the Code does not cover form and format matters (s.11); you might like to consider including some guidance on that in this chapter (for instance, authorities might consider offering a particular requester the means to view information in a way that meets their needs) as well as including a reference in chapter 1 to make it clear that requesters have a right to express a preference about the means by which information they have requested is communicated.

In 2.10 the reference to “costs limit” on line one should instead be “appropriate limit” which are the words used in s.12 of the Act.

Chapter 4 Time limits for responding to requests: PIT extensions

In 4.7 the Code should make clear that the authority has to state to the requester which exemption(s) it is relying on, and explain why.

Chapter 5 Internal reviews

In 5.2 the Code should explain that the authority must state if it does not have an internal review procedure. It should also state that it is good practice to provide internal review details in all responses to requests, not just refusal notices, so a complainant knows they can challenge anything about a response, rather than just refusals.

In 5.3 we suggest you might like to reconsider use of the words “usual practice”, since there does not appear to be any objective evidence to support this statement.

Also in 5.3, it is incorrect to state that authorities are not obliged to accept a request for internal review made later than 40 days from the initial response.

In 5.4 the Code should state the expected timescale for completing an internal review, as set out in the ICO’s guidance: no longer than 20 working days in most cases, or 40 in exceptional circumstances.

In 5.9 the Code should explain that an internal review should sufficiently engage with the complainant’s arguments, particularly on prejudice and the public interest where relevant, to demonstrate that the internal review request has been properly considered.

Chapter 6 Cost limit

We note that this chapter goes beyond providing guidance on good practice under the Act, and focusses on the provisions of the costs regulations. If it is intended to retain this detail, we suggest that the Code make clear it is referring to the regulations. There is also a risk that, by including specific details from the regulations, the Code will become out of date if the regulations are amended.

In 6.2 it is incorrect to state that an authority isn’t obliged to respond to a request that would take it over the costs limit. The authority must respond, explaining its application of section 12.

Chapter 10 Communicating with a requester

In 10.2 the Code should clarify that an authority is not obliged to have an internal review / appeals process. However as we stated above in relation to 5.2, it should also state that it is good practice to provide internal review details in all responses to requests, not just refusal notices, so a complainant knows they can challenge anything about a response rather than just refusals.

In 10.3 the Code should make it clear that authorities have to explain their application of the public interest test where relevant.

As we stated above in relation to 5.9, the internal review response should sufficiently engage with the complainant’s arguments, particularly on prejudice and the public interest where relevant, to demonstrate that the internal review request has been properly considered.

For the remaining chapters, please see comments below and on the draft Code document.

Chapter 8 Transparency publications

Question 2:
Does the guidance about publication of FOI compliance statistics provide enough detail for public authorities to start publishing their own compliance statistics?

No.

If further guidance on this would be helpful what should this cover?

The Code needs to be clearer on practical detail, to help authorities to understand how, when and where they are expected to publish the compliance statistics. Para. 8.6 is contradictory. It states that they should "publish their statistics in line with central government, on a quarterly basis" but then goes on to state "Publication schemes are likely to form the best vehicle for publishing this information".

Central government statistics are published on gov.uk on a quarterly schedule; if other public authorities are expected to accord with that medium and/or timescale, this will need to be explained clearly to them. Otherwise, they will need to understand what they must do to publish that information.

Whilst we agree publication schemes might provide "the best vehicle for publishing this information", publication schemes are not published on a quarterly basis; they are available on a continuous basis, and should be updated regularly. There is no expectation for them to conform to a quarterly schedule, and they are published not on gov.uk but on the public authority's own website.

Will the new statistics fall under the definition of official statistics under the Statistics and Registration Service Act 2007 (and hence fall outside the FOIA s.11(5) definition of a dataset)? Regardless of whether or not they are a dataset, we would encourage the publication of the statistics in an open machine readable format so they can be used and explored by the public.

The ICO's website guidance on publication schemes does not currently contain references to compliance statistics; for clarity we will need to update it to reflect this Code requirement.

Finally, it will be important to publicise the new requirements well to public authorities; how is it planned to do this? The ICO stands ready to assist.

Chapter 8 Transparency publications

Question 3:

Is the guidance about the publication of information about senior pay and benefits clear and helpful?

Partially.

Authorities are likely to perceive a conflict between their existing transparency obligations and those introduced by the revised Code; there is also likely to be confusion about what precisely they are expected to do.

Since publication of this information might give rise to concern, further consideration may be needed as to how it fits in with data protection requirements.

Are there any areas of this guidance where further detail would be useful?

Yes.

This amended section of the Code implies that the information on senior level pay and benefits should be published in an authority's publication scheme, but does not explicitly state that; we think that would be helpful and clearer for authorities.

Whilst this section acknowledges that the level of staff about whom information should be published may not always be “a direct read-across” (8.9), we have concerns that authorities may find the additional requirements of the code to be confusing, when compared with their publication scheme obligations.

The ICO guidance for each sector (the definition documents and guides to information) on publication of salaries and benefits (ie the thresholds and timescales) is likely to differ in some respects from the requirements of paragraphs 8.9 and 8.10. The details in that guidance were the result of discussions with the sectors. Do the Code requirements mean public authorities should publish two sets of information? Do you anticipate that the Code should prevail?

Para. 8.10 states that authorities “can refer to the ICO’s guidance as a guide to the expected minimum level of detail, and that local authorities should follow the “publication requirements” of the Local Government Transparency Code. This needs some clarification; does this refer to the timing of updates to the publication scheme / transparency code publication, or again to the content of the information to be published?

Again, as with the compliance statistics, appropriate publicity will be essential.

Chapter 7 Guidance for vexatious requests

Question 4:
Does the proposed guidance on vexatious and repeated requests provide the right level of detail about the circumstances in which public authorities might want to consider using section 14?

Partially.

In 2016 we commented that this chapter refers to the court’s interpretation of “vexatious”, rather than providing guidance on good practice. We query the legal position on the extent to which this is permissible.

We suggest that this chapter of the Code should reflect the court’s wording as closely as possible, as our guidance on this subject does. It would be helpful to provide a link to our website guidance here.

If further guidance on this would be useful what should this cover?

The report of the Independent Commission on Freedom of Information recommended that the Code should encourage public authorities to make use of s.14 in appropriate cases. In the light of that, we suggest that it could be given greater emphasis in the chapter.

Chapter 11 and Annex - Datasets

Question 5:
Is it helpful to merge the datasets Code of Practice with the main section 45 Code so that statutory guidance under section 45 can be found in one place?

Yes, definitely.

It will assist public authorities in applying the dataset provisions, and in understanding how they relate to the rest of the Act. We note that the text here reproduces key elements of the current datasets code, though more concisely.

Question 6:
If you agree the datasets code should be merged is it helpful to split the datasets guide into a section on release of datasets and a section on guidance on re-use of datasets?

It's helpful to split it into two sections to make the distinction between the provisions on disclosure, which apply in all cases involving datasets, and those on re-use, which apply only in specific contexts. The draft explains that distinction clearly. However, the re-use provisions are still part of the Act; that section could be still included in the main body of the text, rather than being relegated to an Annex, which perhaps implies they have a lesser status.

Other areas within Part I of FOIA

Question 7:

Are there any other areas in Part I of the Act where it would be helpful to have additional guidance in the Code? If so, what do you think the additional guidance should cover and why?

Yes; as outlined below and highlighted in our comments on the draft Code.

Transparency and confidentiality obligations in contracts and outsourced services – Chapter 9

We welcome the guidance provided by the Code on this important issue; the Code rightly points out that the volume of outsourcing in the public sector is continuing to increase. The Information Commissioner's 2015 report on outsourcing pointed out the risks of the transparency gap emerging from this.

Whilst we are making some suggestions to improve the wording of this section of the Code (see below and on the draft Code), we believe that further policy interventions are required to address the emerging transparency gap, and these may need to include formal FOIA designation of some outsourced providers and amendment to the definition of 'information held' in FOIA. The Commissioner will be publishing a report on this issue later in 2018.

We propose that the Code should make greater reference to the Crown Commercial Service's model services contract, which provides standard clauses related to FOIA.

We also recommend that greater reference is made to the importance of publishing contracts and related information about performance under FOIA publication schemes.

In relation to confidentiality clauses, we also suggest that the Code should use stronger wording to make clear that blanket clauses are rarely likely to be acceptable, and parts of a contract marked confidential should be narrowly drawn.

Q1: Is the guidance in chapter 1 of the Code clear and helpful for public authorities to understand the right of access to information in the FOI Act and how to manage requests on this basis? Are there any other areas where it would be helpful for this guidance to be more detailed or where it could be clearer?

Paragraph 1.6 refers to the distinction between “information” and “documents”. Further guidance on this point would be useful since case law suggests that sometimes (eg receipts of expenses) only original documents (or copies of those documents) will suffice where those documents themselves provide additional visual information; and providing the contents of the document in another format is not enough.

Further guidance on dealing with social media requests would be useful in paragraph 1.16. For example, how should authorities provide a response where they only have a Twitter handle as an address?

The section on Fees is slightly confusing. Paragraph 1.20 refers to public authorities being able to charge for “redacting exempt information”. However, the “cost” of redacting exempt information cannot be included by a public authority when it calculates whether the section 12 FOI fees limit has been reached – usually by estimating staff time at a rate of £25 per hour. There is potential for misunderstanding here unless this is clarified.

In paragraph 1.21 it says: “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)…” This needs clarifying: what is the difference between the “physical cost” of making redactions and the staff time in making redactions?

Q2: Does the guidance about publication of FOI compliance statistics provide enough detail for public authorities to start publishing their own compliance statistics? If further guidance on this would be helpful what should this cover?

Yes, this should be relatively straightforward. It would be helpful to have a steer on whereabouts on public authorities’ websites this information should be published, for ease of access and consistency (publication schemes generally only link to other web pages rather than housing content).

Q3: Is the guidance about the publication of information about senior pay and benefits clear and helpful? Are there any areas of this guidance where further detail would be useful?

Greater clarity is required in some key areas:

Level of seniority

The Code refers to "senior executives and their equivalents" (8.7), "senior officials and primarily those at Director level (SCS2) and above" (8.8), "management board level" (8.8) and "senior staff at Director level" (8.9).

It would be useful to have one consistent description of the level of staff that must be included. This will help avoid different organisations interpreting the level in different ways. "Director level" is not particularly useful since the seniority of Directors can

vary quite significantly from one organisation to the next, and certainly from one sector to the next.

Exact salaries or pay band?

It is not clear whether the salaries of £90,000 and above should be published as an exact figure or in a band. Previous disclosures of this kind in response to FOI requests have been in bands of, say, £10,000 and this would appear to be the accepted standard. However, the absence of any mention of a band, plus the specific reference to "published to the nearest £100" for benefits in kind, suggests that an exact figure is required for salaries. If this is the case, it should be explicitly stated.

Definition of expenses

A more detailed definition of expenses, with examples, is required. It should be very clear to organisations what is and isn't included and what is and isn't required, rather than leaving it for organisations to figure it out themselves.

For example, the Code refers to "details of international and domestic travel": does this include travel that has been paid for by the organisation directly or just travel that has been paid by the staff member and claimed as an expense?

What level of detail is required? Is an itemised list broken down by 'international travel', 'domestic travel' and 'business expenses' required or will overall expense figures suffice? Depending on how expense claims are submitted, such itemisation could be very onerous on organisations.

A minimum level above which details of expenses should be published would be welcomed and provide a more proportionate approach that reflects the significant resource that will be required to fulfil this requirement.

Similarly, the quarterly publication interval is, in our view, excessive and poses a resource challenge. Annual publication (in line with the pay and benefits in kind) and within 4 months of the end of the financial year would be a more pragmatic solution.

Hospitality received is not an expense and should be separate, preferably with a minimum monetary level set.

Information Commissioner's Office guidance

8.10 suggests "public authorities can refer to the Information Commissioner's Office guidance as a guide to the expected minimum level of detail". What guidance document is this referring to?

The broad definition of public authorities

The Code should consider that there are a range of different sectors/organisations that fall under the definition of 'public authority' and so a more contextual approach should be available, distinguishing between publicly and privately funded activities.

Universities are not solely publicly funded; international student business is a significant part of our activities and around half of our income is private. Funding can come from donors and research grants from non-public bodies for example. Where

expenses are being claimed from a private source of funding, these should not be within the scope of the Code.

In terms of pay, pursuant to the substituted Decision Notice of the First-tier Tribunal (General Regulatory Chamber) dated 30 September 2014 (EA/2014/0054) where King's College London was the appellant, the university does not intend to publish salary information relating to its academic staff members. It was confirmed by the First-tier tribunal that section 43(2) of the FOIA was engaged as there would be a real and significant risk of prejudice to the university's commercial interests if information relating to its academic staff were to be disclosed.

Q4: Does the proposed guidance on vexatious and repeated requests provide the right level of detail about the circumstances in which public authorities might want to consider using section 14? If further guidance on this would be useful what should this cover?

The section on “Interaction between section 12 (cost limit) and 14(1) (vexatious requests)” is particularly useful.

It would be helpful to have an explanation for why “there is no obligation to explain why the request is vexatious” as this seems inconsistent with the requirements for all other refusals (s12, exemptions) where a detailed explanation is needed.

Q5: Is it helpful to merge the datasets Code of Practice with the main section 45 Code so that statutory guidance under section 45 can be found in one place?

Yes.

Q6: If you agree the datasets Code should be merged is it helpful to split the datasets guide into a section on release of datasets and a section on guidance on re-use of datasets?

Yes.

Q7: Are there any other areas in Part I of the Act where it would be helpful to have additional guidance in the Code? If so, what do you think the additional guidance should cover and why?

No.

KIRKLEES COUNCIL

Please find below the response on behalf of Kirklees Council to the FoI Consultation

1. Is the guidance in chapter 1 of the Code clear and helpful for public authorities to understand the right of access to information in the FOI Act and how to manage requests on this basis? Are there any other areas where it would be helpful for this guidance to be more detailed or where it could be clearer?

Yes and not, respectively.

2. Does the guidance about publication of FOI compliance statistics provide enough detail for public authorities to start publishing their own compliance statistics? If further guidance on this would be helpful what should this cover?

Yes

3. Is the guidance about the publication of information about senior pay and benefits clear and helpful?

Yes

4. Does the proposed guidance on vexatious and repeated requests provide the right level of detail about the circumstances in which public authorities might want to consider using section 14? If further guidance on this would be useful what should this cover?

Paragraph 7.9 of the CoP gives some examples which public authorities may want to use when considering whether a request is vexatious; the first and last bullets state:

· When an applicant has engaged in a large volume of sustained correspondence over a number of years in abusive or confrontational language.

· 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.

It is appreciated that these are only examples, but it is Kirklees Council's experience that a request has been deemed to be is vexatious in the context of other requests and correspondence from both the requester being considered as submitting a vexatious request and as few as one other individual, and where the language used is not abusive or confrontational, but where the requesters are being unreasonably persistent and not engaging with offers to address their issues in a more appropriate way. The ICO upheld Kirklees Council's decision to refuse as vexatious in context, and we therefore think it would be useful to show a range of examples not just the very worst end of it, because it can be more subtle than is described in the bullets.

5. Is it helpful to merge the datasets Code of Practice with the main section 45 Code so that statutory guidance under section 45 can be found in one place?

Yes

6. If you agree the datasets Code should be merged is it helpful to split the datasets guide into a section on release of datasets and a section on guidance on re-use of datasets?

Yes

LISS PARISH COUNCIL

We have received comments from one of our Councillors on the Freedom of Information Code of Conduct Consultation, which I have set out below:-

Question 1 re whether the guidance in Chapter 1 is clear and helpful for Public Authorities to understand right of access.

- Yes, but In order to ensure the requester of the information is a bona fide person they should be required to provide their postal address even when requesting the info via email and requesting a response via email.

- I do not think a request for information via social media is appropriate and have some concerns about how this would work in

Any other areas for more detailed guidance.

No, apart from the above.

Question 2 re guidance about publication of stats.

- Yes

Question 3 re publication of info about senior benefits etc.

- Yes

Question 4 re guidance on vexations.

- Yes

Question 5 re is it helpful to merge the datasets under section 45.

- Yes as it will be helpful to find the data in one section.

Question 6 re is it helpful to split the datasets into sections.

- Yes as long as they are in one place under Section 45. Splitting them would provide better clarity.

Question 7 re any other areas in Part 1 of the Act where it could provide additional guidance.

Can't think of any.

LOCAL GOVERNMENT ASSOCIATION

We were keen to coordinate a sector wide response to your consultation in order that we could provide you with the individual views and a collective assessment on behalf of the whole of local government. Moreover, you were kind enough to allow us an extension period to prepare this work up to around 20th February 2018.

We made contact with around 800 representatives (in all councils) who have responsibility for data sharing and information governance. Also, our chief executive, Mark Lloyd made mention of the consultation in his weekly eBulletin to all chief executives. Additionally, we included a call for involvement in several of our

newsletters and ebulletins based on the message published online here: http://e-sd.org/hspFn/

However, I have to advise that we have received very few responses (of the order of 5 or 6) and these appear to be wide ranging in opinion and in the areas of consideration. As a consequence, we feel unable to develop a sector-wide response to you as we had hoped. In discussions today … we decided not to submit a response.

However, we would like to contact those few respondents who did participate and explain the position and encourage them to send their materials directly to you.

MYSOCIETY

Key Points

● Freedom of Information requests should be responded to promptly. We welcome the proposed sections in the code of practice on time limits for both internal reviews and public interest tests. We would like to see the code of practice urge quicker responses in other cases too, for example where requests are made for a copy of a Freedom of Information response which is in the news, or which has prompted public debate.

● We want to see a culture of openness and transparency in public bodies; this code of practice should set an appropriate tone. We would rather see proactive publication of material than information having to be requested from public bodies. Every Freedom of Information request should prompt consideration of if the type of information requested can practically be routinely published online.

● The relationship between the code of practice and other sources of official guidance, such as the excellent material produced by the Information Commissioner's Office, needs consideration. Duplication should be avoided. Perhaps the code of practice could formally endorse, or incorporate, some or all of the Information Commissioner's guidance?

Is the guidance in chapter 1 of the Code clear and helpful for public authorities to understand the right of access to information in the FOI Act and how to manage requests on this basis? Are there any other areas where it would be helpful for this guidance to be more detailed or where it could be clearer?

Timeliness of responses

4. The code of practice should stress the importance of a prompt response. Copies of material already released in response to a request should be provided to other requesters, and ideally placed online, without delay. During working hours in a large organisation with a dedicated FOI / communications staff such responses should be provided within a matter of hours. Public bodies should consider prioritizing responses to requests which will inform current public debate. For example when news articles are based on Freedom of Information responses others requesting access to the released material should be able to obtain it rapidly.

5. We support bringing the time limits for internal review & public interest test extensions into the code of practice; we understand the limitations of the code of practice and consider bringing these time limits into law to be preferable. The lack of

enforceable time limits can mean in practice that valid requests can be stalled effectively indefinitely in these stages. We suggest strengthening the language in paragraph 4.7 by removing the word ‘ideally’. The overriding principle of ensuring a response is provided promptly should be retained even when a public interest test, or internal review, is being carried out.

6. Extensions of the time limits for the purposes of carrying out a public interest test should be fully justified and explained, the nature of the consideration being undertaken, and the reasons for the delay should be shared with the requestor.

Pseudonymous requests

7. Paragraph 7.10 allows use of a pseudonym to form part of broader considerations about if a request or series of requests is vexatious. This represents a departure from current ICO guidance: ‘Dealing with vexatious requests (section 14) v1.2’ which currently doesn’t contain pseudonyms in its list of indicators of a vexatious request. Paragraph 2.7 also explicitly references the use of a pseudonym as a reason for not responding to a request.

8. While acknowledging that authorities are not legally required to process a pseudonymous request, there may be many valid motivations behind an attempt to use a pseudonym. Ideally, we would like to see the code of practice explicitly reflect the paragraphs 18-19 of the Information Commissioner’s guidance: ‘Recognising a request made under the Freedom of Information Act (Section 8) v1.3’, that, while not required to, public bodies can process pseudonymous requests at their own discretion (with diminished ability for requesters to appeal).

9. We believe that in circumstances where a possible pseudonym is being used as part of a determination of the validity of a request there should be sufficient alternate indicators to allow requests to be evaluated appropriately. Our concern is that where the most prominent association of pseudonyms in the code of practice is with vexatiousness, public bodies will see this as more explicitly negative than the current guidance - which acknowledges the request is invalid but encourages public bodies to exercise discretion in their treatment.

10. We would also like the code to reinforce the Information Commissioner's guidance that ‘real name’ should be interpreted to include any name by which a person is widely known, including allowing use of maiden names and names of an organization or company.

Application of exemptions

11. The code of practice should make clear that exemptions which may allow public bodies to withhold information don't always have to be applied, often a public body will be free to choose to release material, and it should consider doing so. The wording of paragraph 1.1 of the proposed code of practice needs to be amended to reflect this. There should be a presumption of transparency.

Publication schemes

12. Publication schemes should ideally include links to information which is available online. Currently the potential benefits of publication schemes are not being realised; they are not generally useful documents.

Proactive publication

13. Provisions relating to datasets in the Freedom of Information Act (introduced by the Protection of Freedoms Act 2012) require public bodies to publish whole datasets when requests are made for information contained in them as well to proactively publish updated versions of datasets which have been requested and released. These principles could be extended to other information accessible via Freedom of Information requests. For example if a request is made for the papers of a particular committee meeting that request should prompt a public body to consider proactively publishing the papers for that committee in the future.

14. Asking public bodies to consider proactive, future, publication of the type of information requested should not be onerous for public bodies, it should lead to more information being made available to the public without requests having to be made, reducing staff time spent responding to individual requests.

15. The reasons information is not already being proactively published, or cannot practically be proactively published, by public bodies may be of interest, and value, to the public. Information which cannot easily be prepared for release may also not be easily accessible to those charged with management or oversight of public bodies. Understanding, and sharing, the nature of problems with information management within public bodies may lead to those problems being addressed.

16. We would like to see a section in the code of practice on disclosure logs. Disclosure logs are webpages where material released under the Freedom of Information Act (and other access to information legislation) is made available to the public. Major public bodies, such as Government departments, principle councils, should run comprehensive disclosure logs which are updated at the same time as information is released to the requestor. Policies for the excluding material, including rejected requests, from disclosure logs should be published.

Requests for requesters' own personal data

17. Sometimes a requestor's own personal data is included in information requested, but, anyone seeking the information under the Freedom of Information Act could expect to receive it as its release would not breach the provisions of the Data Protection Act.

18. An individual whose personal data is included in requested material should not have the Freedom of Information element of their request dealt with in any way differently from a request made by someone whose personal information is not contained in the information requested.

19. For example someone asking a provider of NHS primary care services for details of policy changes made in response to complaints into a certain area of work should receive the same response if they had raised one of the complaints in question themselves, or not. Individuals making Freedom of Information requests for information which may include their own personal information should be offered the opportunity to make a Subject Access Request under the Data Protection Act (or any replacement regime) for any material which can only be released to them. This is a complex area and public bodies need to provide appropriate advice to requestors.

Fees

20. The code of practice, and public bodies, should make clear that Freedom of

Information requests almost always involve no charges to the person making them, and no liability to pay a fee will be incurred without express agreement from a requestor.

21. The code of practice, and public bodies, should make clear that any charges for photocopying, printing and postage can be usually be avoided by conducting request by email.

22. Many public bodies, on Freedom of Information web-pages, or in initial responses to Freedom of Information requests, make what can be quite scary statements about fees and costs which can frighten those considering making requests for information. We advise our users to ignore such statements.

23. The suggestion in paragraph 1.22 that public authorities can charge for the physical cost of making redactions and not staff time or considering whether exemptions apply could usefully be clarified. Is there generally any clear distinction between the two processes in the modern digital world? If the reference is intended to refer to physical techniques such as using a scalpel to physically cut out parts of documents perhaps that could be clarified.

Means of communication

24. By making a request by email a requestor is clearly, if they don't specify otherwise in the body of the message, expressing a preference to receive a response by email.

25. One problem we see from time to time is a public body using an address it holds for other purposes to respond to a Freedom of Information request. That could result in someone making a request by email receiving a response by post, or receiving a response to another email address.

26. Specifically in relation to WhatDoTheyKnow.com if a request is made via the service a response should be sent to the specific @whatdotheyknow.com email address associated with the request which has been provided for the purpose of receiving the response.

27. Public bodies should consider the ease of use of released material. Text, and numerical/financial data should not be supplied as images, but in structured computer-readable formats. Guidance on this point is present in paragraph 11 of the proposed code of practice in relation to datasets, the same guidance should apply more widely. Open formats should be used rather than formats which require software from particular companies to access. Public bodies should be aware that members of the public requesting information will often not have access to computer software which may be common within the public sector and take that into account when preparing material from release.

28. Public bodies should make it easy for people to make Freedom of Information requests. While a request is valid irrespective of who within an organisation receives it, it is good practice for public bodies to publish the email address to which they prefer Freedom of Information requests to be sent.

Clarification requests

29. The code of practice should make clear bodies requiring clarification of a request should seek such a clarification promptly. This may be another area in which the

code could set out an expected timescale. Too often clarifications are requested after many weeks have elapsed since a request was made, delaying the response to a request.

Acknowledging requests for information

30. Freedom of Information requests should be promptly acknowledged, this gives requestors an assurance their request has been received and is being dealt with. Routine provision of acknowledgements may enable communication problems to be identified at an early stage, and allow for requests to be re-sent if required. Sometimes currently the first indication of a communication problem can be the lack of a response within the statutory time limit. Paragraph 10 of the proposed code could be extended to make reference to acknowledgments, and should be amended to distinguish an "initial response" from an acknowledgement.

Information accessible by other means

31. Use of the "information accessible to applicant by other means" exemption in Section 21 of the Freedom of Information Act should be carefully considered. This exemption enables public bodies to essentially exempt any information they can list on their website, put a price on, and make available for sale, from the provisions of the Freedom of Information Act. The code of practice should implore public bodies not to abuse this loophole.

32. It is good practice for public bodies to consider if it is appropriate to levy any charges, as referred to in Section 21(2)(b) of the Freedom of Information Act in particular circumstances, and certainly to properly consider any requests for a waiver of any charges. Essentially a public interest test should be applied in relation to the Section 21 exemption even though one is not required by law. If fees are generally charged per document, a waiver on public interest grounds could enable the analysis of a large number of documents which would otherwise be uneconomical. A public body may not wish to levy a charge generally imposed on professional, or commercial, users of information when a request comes from an individual, or an elected representative. Ideally any charging schemes should foresee such circumstances, and proactively provide for them.

Commitment to greater openness

33. The current code of practice contains a forward stating: "The Government is committed to greater openness in the public sector. The Freedom of Information Act will further this aim by helping to transform the culture of the public sector to one of greater openness, enabling members of the public to better understand the decisions of public authorities, and ensuring that services provided by the public sector are seen to be efficiently and properly delivered." We would like to see those commitments and aims reaffirmed any revised document.

Status of the code of practice

34. The code of practice is not currently a document we use, or refer to, on a regular basis while advising our users on the operation of the Freedom of Information regime, or in our discussions with public bodies and the Information Commissioner in relation to the operation of our service.

35. The status of the code of practice, its purpose and its relationship with other sources of guidance should be clearly presented. Consideration should be given to if

the code of practice is intended as a public facing document, if so then should public bodies be expected to link to it from their Freedom of Information web pages?

36. We suggest that guidance currently issued by the Information Commissioner, which provides clear and detailed guidance for authorities, be systematically reviewed to consider if elements of it should be given more weight via their inclusion, directly, or indirectly, in the code of practice.

37. We appreciate the Information Commissioner is able to update their guidance more easily than the code of practice can be updated but it would be desirable to coordinate the code of practice with official guidance from other sources. Duplication should be avoided, as should requiring users of guidance in this field to check two, or more, locations to find what they are looking for.

38. While the primary purpose of the code of practice is to provide guidance to public bodies subject to the Freedom of Information Act, it could also be positioned as guidance setting out good practice which other bodies carrying out a public function might like to follow.

Does the guidance about publication of FOI compliance statistics provide enough detail for public authorities to start publishing their own compliance statistics? If further guidance on this would be helpful what should this cover?

Publication of compliance statistics

39. We are in favour of the production of compliance statistics, as referenced in paragraph 8.5, for public bodies with more than 100 FTE employees. The equivalent publication for central government through the Cabinet Office has been a very useful resource in understanding the differential effectiveness of FOI processing at different departments.

40. However, we have concerns with both the suggested questions and the publication process.

41. The suggested five statistics cover much less ground than the Cabinet Office central government releases. For instance, the draft code of practice suggests that the number of internal reviews should be published - but not if internal reviews were successful. Similarly, the draft code of practice suggests the number of requests withheld should be published – but this also needs to include the reasons given for information being withheld to help understand practice across public bodies. In general, we believe that the questions currently used in the Cabinet Office data releases should form the basis for the disclosure template.

42. The format and venue of the publication of this information is also important. One could envisage hundreds of PDFs published on different websites, from which it would be hard to extract data for comparison. With this in mind, we recommend that this data is:

a) published to a consistent schema in a data format (csv, json) rather than pdf.

b) lodged in a central repository to enable cross-comparison.

c) published over consistent time ranges - ideally separate quarterly and annual statistics to mirror the Cabinet Office releases.

Is the guidance about the publication of information about senior pay and benefits clear and helpful? Are there any areas of this guidance where further detail would be useful?

43. It should be made clear that the proposed guidance on publication of senior executive pay and benefits should not be interpreted as supporting the automatic refusal of specific Freedom of Information requests for information relating to pay or benefits of other, more junior, staff.

44. Information should be published in a standardised, machine readable, open format to enable analysis and comparisons. Consideration should be given to the establishment of a central repository for published information on this subject. The repository could host, present, and enable basic querying of the data, as well as notify public bodies, and the public, of any failures to comply with the provisions of the code.

Does the proposed guidance on vexatious and repeated requests provide the right level of detail about the circumstances in which public authorities might want to consider using section 14? If further guidance on this would be useful what should this cover?

45. See section on pseudonymous requests in answer to question 1.

46. We are aware that the vexatiousness exemption has been used in cases where public bodies have considered a disproportionate amount of time would be required to review, and redact, material. The exemption for vexatious requests has been interpreted as allowing a request to be rejected on the grounds of disproportionate disruption/burden caused by spending time reviewing and redacting material, even though time spent redacting material is excluded from what can be taken into account when determining if a request exceeds the cost limits. As this is an unusual, and counter-intuitive, extension of the meaning of the word “vexatious” it needs to be clearly explained using appropriate, carefully chosen, language in correspondence explaining a refusal to a requestor.

47. A reasonable level of chasing up a response to a request, for example asking for an update on progress every week or so should not result in request being considered vexatious. What’s reasonable may well depend on the detail of the correspondence in a particular case, and if, for example, a justified expected date of response has been provided.

Is it helpful to merge the datasets Code of Practice with the main section 45 Code so that statutory guidance under section 45 can be found in one place?

If you agree the datasets Code should be merged, is it helpful to split the datasets guide into a section on release of datasets and a section on guidance on re-use of datasets?

48. As we have stated elsewhere we consider it desirable to present all official guidance relating to this field in a coherent, easy to find, accessible and understandable manner.

49. Again, as stated elsewhere, there are many areas where the code of practice currently only applies to datasets but could be generalised and applied more broadly; for example on considering proactive publication following a request for information, on providing responses in open, accessible formats and on licensing. We understand

there are specific legislative and other considerations which only apply to datasets, however the starting point a could be consistent, generalised, code of practice. We would like to see changes to legislation to provide consistency in this area too, not just in the code of practice.

Are there any other areas in Part I of the Act where it would be helpful to have additional guidance in the Code? If so, what do you think the additional guidance should cover and why?

Applicant blindness

50. The Information Commissioner and Information Tribunal have long upheld the principle of Freedom of Information Act being applicant and motive blind. While the Freedom of Information Act contains a requirement that requesters provide their real name it is expected that authorities will treat the request 'applicant blind' and not pay any attention to the identity of the applicant, other than in particular, uncommon, circumstances relating to determining if a request is vexatious, or if requests should be combined for the purposes of calculating if responding will result in costs exceeding the limit set out in law.

51. In practice, it is generally acknowledged that certain kinds of requester (such as a known journalist) may receive a different service from some authorities than an unknown requester. While trialing our WhatDoTheyKnow Pro service (which can temporarily embargo requests – and so hide them from public view), we received multiple enquiries from FOI officers who were unable to find the usual public page associated with a request sent through WhatDoTheyKnow. The implication of this is that at least some FOI officers are investigating other requests from the same user and were not treating the request as applicant-blind.

52. With this in mind, it is a concern that the code of practice currently does not support the 'applicant blind' approach and set out best-practice in how to implement it in practice. The code should be more explicit in reflecting existing guidance and tribunal decisions in this area. There is clearly a tension between the principle of applicant and motive blindness (mentioned in paragraph 111 of the ICO guidance on recognising a Freedom of Information request) and the suggestion in the proposed code that authorities might want to consider the motivation and request history of a requester in order to assess vexatiousness (paragraph 7.5 of the proposed guidance) or use that as a reason to reject a request (paragraph 2.7) or consider whether requesters are acting together when aggregating requests for the cost limit (paragraph 6.5). We would like to see the code of practice make clear that extensive research into the identity and background of requesters should not be part of the standard practice of officers responding to Freedom of Information requests. The ICO notes in their guidance "we would not want to see a situation where authorities routinely carry out checks on requesters".

53. We want to see Freedom of Information law used in the public interest by those with good reason not to use their real names such as whistleblowers within public bodies. While we understand the code of practice will have to reflect the law we would like to see the code note the Information Commissioner's guidance on what constitutes a "real name" (again in its document on recognising a Freedom of Information request) and promote the fact a request can be made using a maiden name, any name by which you are "widely known and/or is regularly used", or the name of an organisation / a company. We regularly see public bodies ask for a requestor's name when requests are submitted in the name of organisations. Contractors and outsourced services.

54. Section 9 of the proposed code of practice would be stronger if backed by legislation, for example to require contractors to provide requested information to the public body they are contracted by when a Freedom of Information request for it has been made. Memoranda of understanding and contracts can set out working arrangements but the principles should be laid down in law.

55. If there is an intent to extend the scope of Freedom of Information law to more bodies providing public services this needs to be done via legislation; there is a need to recognise the limitations of what can be achieved via the code of practice. Private bodies providing public services in some sectors, for example those providing certain NHS services, are already subject to Freedom of Information law, this principle could be extended but doing so is beyond the scope of the code of practice.

56. The code of practice should take account of the fact public bodies outsource the provision of services to each other; it is not just private sector contractors which may hold information on behalf of a public body.

57. Guidance should make clear that requests for information held by a contractor on behalf of a public body should be made to the public body. Public bodies should take responsibility for obtaining information from their contractors and should not merely refer requesters to contractors. This principle is present in the proposed code of practice (paragraph 9.8) but it could be clearer and phrased from the point of view of a requester.

58. Public bodies could be encouraged to set out, in their publication schemes, what information is held by contractors on their behalf, and make clear how that information can be obtained.

Reducing occurrences of accidental releases of information

59. The guidance does not cover effective redaction and other techniques that authorities should be using when releasing information in order to avoid mass data breaches.

Reuse and licensing

60. Too often public bodies include frightening boilerplate text within responses to Freedom of Information requests which may deter requesters from using, and acting on, information released. Public bodies should only make such warnings when they are genuinely relevant to the specific information being released.

61. Where it is appropriate to do so, rather than seeking to restrictively licence released information, public bodies should release material into the public domain.

Internal reviews

62. The section of the code of practice on internal reviews should be drafted with consideration of the fact an internal review is sometimes requested into the initial handling of a request (eg. if a request was not responded to at all, or not recognized as a Freedom of Information request), and potentially again once a substantive response under the terms of the Freedom of Information Act has been obtained.

Applicability of Freedom of Information law to backup files

63. We note that paragraph 1.11 states back-up files should generally be regarded as not-held for the purposes of the Freedom of Information Act. We do not believe this is in line with current case-law, or guidance and decisions from the Information Commissioner. We suggest reviewing the basis for this element of the proposed code of practice.

NATIONAL ASSOCIATION OF LOCAL COUNCILS

We welcome the publication of the draft Code of Practice and its associated consultation. Whilst NALC and local councils support the transparency agenda in local government, there are certain caveats regarding the Freedom of Information transparency mechanism, especially as it applies to smaller parish councils, officer time and resource managing vexatious requests for information on a repeat basis from some residents. Whilst some detail has been provided in the relevant subsection of the draft Code of Practice on vexatious requests, more detail could be provided in subsections 7.5 and 7.7 to afford more protection to the clerks of smaller parish councils who often receive vexatious requests for information.

A summary of our key points in response to consultation question 4 is as below:

- We welcome in principle the Cabinet Office commitment to having updated the relevant section on vexatious requests of the draft Code. We agree that the public and the media have the right to ask councils and other bodies which handle public money for information and be provided with it. However, there should be a way of managing vexatious individuals, who lodge repeat requests for inappropriate information which is not genuinely required for legitimate reasons;
- One aspect which is not specifically contained is a clear statement that "vexatious" for these purposes is given a wider meaning than might be assumed from the ordinary use of the word, which can perhaps imply a degree of malice. In a perfect world, it would be better for the Act to use a more neutral term but we understand that amendments to the Act are unlikely in the near future given current pressures on parliamentary time;
- The draft Code has more useful advice on what is a valid request (chapter 1), internal reviews – although a very small public authority, such as a parish council with a part-time clerk, does not have to have a review process and commercial contracts (chapter 9);
- NALC welcomes the draft Code but considers that Cabinet Office clarity on the meaning of the term "vexatious" is needed in the draft Code;
- It is very likely that many smaller parish councils will need to invoke section 14(1) of the draft Code as they are often the recipients of repeat vexatious requests under the Freedom of Information Act for inappropriate information (for instance often starting with misunderstandings regarding parish powers on planning applications);
- We also agree that parishes as public authorities should decide on what comprises a vexatious request for information on a case by case basis;
- Specifically regarding subsection 7.5 of the draft Code many smaller parish council clerks have much of their officer time taken up dealing with spurious requests for information often from the same residents for no apparent reason. Given that many of these clerks are part time this is an inefficient use

of time and money, and causes distress for the clerks concerned (and can lead to a significant turnover of councillors and clerks in the parish sector);

- Subsection 7.7 of the draft Code is helpful but more information could be provided by the Cabinet Office about what other powers may be open to parish councils to use when on the receiving end of repeated vexatious requests for information from the same resident (given that very often these requests are not mad for a good reason and they are on the same subject); &
- Subsections 7.8-7.12 of the draft Code are very helpful.

Levying charges for supplying information

The Code appears to refer only to information which is covered by the 2004 Fees Regulations (SI 3244 2004). One view is that the Regulations (and therefore the fee limits) do not apply to information which is being supplied via a council's publications scheme, where that publications scheme has clearly specified that charges will be levied, including for the staff time that is involved. However we also accept that this power will not always act as a deterrent in practice. Clearer guidance is needed from the Cabinet Office in the draft Code of Practice on specifically whether a council can recover its costs, if the charging regime is clearly specified in the council's publications scheme.

Exemptions from disclosure

Section 36 of the FoI Act 2000 empowers public authorities, including parish councils, to decline to disclose information where to do so might be deemed to inhibit the authorities from expressing free and frank exchanges of views, before a decision is made. The 'qualified person' for each local council is the clerk. However, the draft Code currently appears to offer no guidance on the exercise of this role.

Whilst NALC is committed to openness and transparency and public accountability, the Freedom of Information Act is a significant burden for the parish sector: proportionately much greater than for large authorities and Government Departments. The draft Code needs to reflect this and help to reduce this burden.

NATIONAL POLICE CHIEF'S COUNCIL

Is the guidance in chapter 1 of the Code clear and helpful for public authorities to understand the right of access to information in the FOI Act and how to manage requests on this basis? Are there any other areas where it would be helpful for this guidance to be more detailed or where it could be clearer?

Generally the guidance is clear and helpful. However the following observations are put forward.

Paragraph 1.4

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

This should refer to 'written requests' for information and/or section 8 criteria. As currently worded, it would appear to include requests that do not meet the section 8 criteria (e.g. verbal requests).This should be expanded to clarify the interpretation of requests for documents. For example, the ICO 'Lines to take' stated:

'Although the Act provides a right of access to information rather than copies of documents, requests may refer to specific documents as a way to describe the information requested. A request for a particular document should generally (unless the context makes clear that this is not the case) be interpreted as a request for all of the information recorded in that document.'

The ICO guidance titled 'Right to recorded information and requests for documents' states:

'If the authority holds a single document that matches the description given, then it should treat this as a valid request for all the recorded information in that document.'

Paragraph 1.4 also states that a request for recorded information will be treated as a request under the Act, "*other than … the requester's own personal data"*

This statement is unclear since an individual may request their own personal data under the FOIA however it will be refused at s.40. Is this point stating that requests for an individual's own personal data need no longer be processed under the FOIA.

It would be helpful to clarify the interaction between the FOI Act and the subject access regime of the Data Protection Act. In particular, where a requestor asks for their own data under the terms of FOI, is there a need to issue a refusal letter under FOI. If so what should that look like?

A related issue is the requirement to undertake a public interest test on confirming or denying whether any of the requester's own personal data is held or not (see paragraphs 26 to 34 of ICO Guidance 'Neither confirm nor deny in relation to personal data')[1]. The police would argue that it is neither practical nor helpful to the requester for a Public Interest Test to be undertaken in this respect. The right to the information (or to be told whether any exists) is contained in the subject access provision of the Data Protection Act. To bring some of that responsibility into the FOI Act unnecessarily confuses the issue, both for the requester and for the public authority. It introduces a risk of releasing the requester's own data into the public domain and places an extra and unnecessary level of processing for the public authority.

Paragraph 1.11

'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'

This appears to conflict with the ICO guidance titled 'Determining whether information is held'. The ICO guidance applies the rationale in paragraph 1.11 to information that has been 'double deleted' and awaiting overwriting but NOT to backup tapes.

Paragraph 1.14

Further clarification of section 8(2) would be helpful, particularly with regard to section 8(2)(c) i.e. a request is to be treated as made in writing where the text of the request is capable of being used for subsequent reference. Whilst it is understood that this seeks to exclude written requests submitted in a non-permanent format such as projecting a request onto a building or through a window. However, further explanation of examples to explain what is meant by section 8(2)(c) would be helpful.

As an observation, the First-Tier Tribunal (Bilal Ghafoor v ICO, EA/2015/0140) has rejected the ICO's view that a Twitter username constitutes a valid 'address for correspondence' under section 8(1)(b) FOIA. While this may not constitute case law, if the revised code of practice is to recommend that a Twitter handle is an acceptable address for correspondence, it should also provide guidance for responding to such requests, especially given the limitations of Twitter highlighted by the First-Tier Tribunal (e.g. 140 character limit).

Paragraph 1.10

It should be made explicit that information held in personal email accounts is held for the purposes of FOI if it is linked to the individual's role. Also the statement "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" should emphasize this relates to data that is not in any way processed or manipulated.

Paragraph 1.14

Clarification is required as to whether a company or pressure group name, rather than an individual's name, should be accepted or challenged.

Paragraph 5.9

"The public authority should in all cases re-evaluate their handling of the request, and pay particular attention to concerns raised by the applicant".

This should be broadened to require an applicant to detail concerns or identify grounds for appeal allowing public authorities to provide a more focused response to points raised by applicants.

Paragraph 7.14

It would be helpful if the guidance made clear that Section 16 obligations still exist for requests identified as overly burdensome.

Does the guidance about publication of FOI compliance statistics provide enough detail for public authorities to start publishing their own compliance statistics? If further guidance on this would be helpful what should this cover?

Section 8.5 of the draft Code of Practice states that published FOIA information should include the number of requests where the information was granted and the number of requests where the information was withheld. It should be noted that it will not be possible to categorise all requests as either "granted" or "withheld". In reality a request may result in a partial disclosure, neither confirm nor deny or a mixture of disclosure and no information held.

Is the guidance about the publication of information about senior pay and benefits clear and helpful? Are there any areas of this guidance where further detail would be useful?

This is clear and helpful.

Does the proposed guidance on vexatious and repeated requests provide the right level of detail about the circumstances in which public authorities might want to consider using section 14? If further guidance on this would be useful what should this cover?

The guidance provides a good level of detail regarding the circumstances in which Section 14 might be considered.

Is it helpful to merge the datasets Code of Practice with the main section 45 Code so that statutory guidance under section 45 can be found in one place?

Yes.

If you agree the datasets Code should be merged is it helpful to split the datasets guide into a section on release of datasets and a section on guidance on re-use of datasets?

Yes.

Are there any other areas in Part I of the Act where it would be helpful to have additional guidance in the Code? If so, what do you think the additional guidance should cover and why?

No further suggestions are made for additional guidance beyond those already stated.

NORTHERN IRELAND EXECUTIVE

Departments here were alerted to the consultation at a meeting of the Information Management Council (composed of Departmental Information Managers) on 6 December 2017. It was agreed that there was no need for a co-ordinated, formal NI Civil Service response to the consultation.

Work on devising a consultation document on a revised section 45 Code of Practice has been ongoing for a number of years now, and we have had earlier video and telephone discussions with Cabinet Office FOI staff. From our point of view, the published consultation document throws up no great surprises and we are generally content with what is being proposed. There is only one question I would pose in passing and it concerns paragraph 2.9, which deals with the issue of clarification: How long are public authorities expected to wait for the further information or clarification? It might be useful to suggest a timeframe (e.g., one month), so that there is a measure of consistency across the board.

NORTHINGTON PARISH COUNCIL

Northington Parish Council has reviewed the revised Code and does not wish to submit a response.

NORTHUMBERLAND ASSOCIATION OF LOCAL COUNCILS

The Northumberland Association of Local Councils represents the overwhelming majority of parish, town and community councils in Newcastle-upon-Tyne and Northumberland.

Our County Committee considered the consultation paper when it met on 20 January 2018, who endorsed the following comments.

"A number of Member Councils have suffered or are suffering from FoI requests which appear to be vexatious.

One aspect which is not specifically contained is a clear statement that "vexatious" for these purposes is given a wider meaning than might be assumed from the ordinary use of the word, which can perhaps imply a degree of malice. In a perfect word, it would be better for the Act to use a more neutral term but amendments to the Act are unlikely in the near future given current pressures on Parliamentary Time.

The draft code has more useful advice on what is a valid request (chapter 1), internal reviews – although it would be useful perhaps to say that a very small public authority, such as a parish council with a part-time clerk, does not have to have a review process and commercial contracts (chapter 9)"

NOTTINGHAM CITY COUNCIL

1. Is the guidance in chapter 1 of the Code clear and helpful for public authorities to understand the right of access to information in the FOI Act and how to manage requests on this basis? Are there any other areas where it would be helpful for this guidance to be more detailed or where it could be clearer?

- 1.2 states "any form" but then qualifies it with "electronic or paper", whereas the Act just says "any form" in s84. Perhaps the Code should use the term 'hard copy' or something similar? After all, microfiche is neither electronic nor paper, and boards, signs and other materials that could be used in the public space are not likely to be considered as being in either form but could be touched by this legislation.

- 1.3 talks about "new information" – further guidance on what constitutes 'new information' would be helpful.

- 1.12 – mention of level of search expected is helpful.

- 1.10 refers to "trade union information." It might be helpful to clarify that this means information held by trade unions working within/alongside the authority using the authority's IT network etc., rather than information about trade unions held by the authority.

- 1.14 refers to the use of pseudonyms. Where does the burden of proof lie regarding pseudonyms? Please could the Code elaborate on this – unless this is a matter for the ICO guidance notes and not the Code?

- 1.20 already allows for redaction costs. 1.21 then adds a confusing sentence about how the cost of making redactions can be included when staff time is used over the limit.

- 2.9 refers to “no response” being received but does not seem to offer guidance on what time frame is considered reasonable for the requestor to respond within. This would be useful to ensure national consistency of approach.

- 3.5 reads “If a decision to made” rather than “If a decision is made.”

- The wording of 6.4 feels circular. Better to make reference to the expenses listed as acceptable for charging for requests under s9 and s13 as NOT being acceptable for s12.

- 7.15 feels like an unrealistic example. A database is by nature something that you can query. The query can be written to include and exclude pieces of information. Why would you need to redact when you can easily extract in this situation? Hand written files, for example, would need to be redacted in this way and so may be a better example.

2. Does the guidance about publication of FOI compliance statistics provide enough detail for public authorities to start publishing their own compliance statistics? If further guidance on this would be helpful what should this cover?

- 8.5 does not refer to responses where information was partly provided and partly withheld, which is often the case in reality. Is the approach ‘any’ or ‘all’ when considering which category to place those requests in? It may be misleading to the public to say ‘any’, as often only a small piece of the information is redacted (e.g. under s.40(2)), but of course this means that not all the requested information is released.

3. Is the guidance about the publication of information about senior pay and benefits clear and helpful? Are there any areas of this guidance where further detail would be useful?

8.10 refers to expenses being ‘quarterly’ rather than annually like the other information about Senior Executive Pay & Benefits, it may be worth explaining why in the Code.

4. Does the proposed guidance on vexatious and repeated requests provide the right level of detail about the circumstances in which public authorities might want to consider using section 14? If further guidance on this would be useful what should this cover?

7.12 and 7.13 could be clearer and possibly tie in with the guidance in sections 1 (Fees) and 6 more easily.

5. Is it helpful to merge the datasets Code of Practice with the main section 45 Code so that statutory guidance under section 45 can be found in one place?

Yes

6. If you agree the datasets Code should be merged is it helpful to split the datasets guide into a section on release of datasets and a section on guidance on re-use of datasets?

It may be preferable to refer to all this all in one datasets section, as it would be easier for staff to refer to.

7. Are there any other areas in Part I of the Act where it would be helpful to have additional guidance in the Code? If so, what do you think the additional guidance should cover and why?

No further comments to add

NOTTINGHAM TRENT UNIVERSITY

In response to the open consultation seeking views on the revised Freedom of Information Code of Practice, a response to the summary of questions raised within the consultation is provided below on behalf of Nottingham Trent University.

Summary of questions:

1. The guidance provided in chapter 1 of the Code is clear on the right of access to information. There are no areas which require further clarity.

2. The guidance appears to provide sufficient clarity with regard to publication of statistics.

3. We consider that the revised Code places a challenge on universities in terms of understanding what information to publish. It is our view that the proposed figure of £90,000 is too low. HEFCE's recommendation has always been that Universities publish the number of staff earning £100,000 and above and Universities have been providing this information within their financial statements for some time. If the Code was to be amended (for universities) to state £100,000, this would be preferable and align with current practices. If the Code is to remain as drafted, we would like to see further information/guidance provided to Universities on the definition of "director level or equivalent". If this definition is left as drafted it is likely to result in inconsistencies across the sector.

In addition, publication of expenses as proposed is likely to place a significant burden on the HE Sector as a whole both in terms of volume and work required to collate the information, especially where there are manual systems for submitting expenses. Staff do not always submit claims at a point where they are incurred and a quarterly publication is unlikely to show an accurate figure. From a university standpoint, annual publication would be a preferred method.

4. This guidance appears to provide clarity on the issue of vexatious and repeated requests and is welcomed.

5. It would be preferable if the datasets code is merged with the main Code so that this information is retained in one place as it would provide clarity on the dataset requirements.

6. Yes, it would provide better clarity if the section was split into release of datasets and guidance on the re-use of datasets.

7. The revised Code provides a more detailed level of guidance to public authorities than the current Code and this is helpful. There are no further areas of guidance that we believe need to be added to the Code.

OAKLEY AND DEANE PARISH COUNCIL

Whilst we do not have any specific issues with understanding the changes, and the clarification of vexatious requests is helpful, we are a little unsure on the overall effect on smaller parishes of the change of requirements. We do not, for example, have datasets which would fall under the definition in the consultation document, but other similar sized parishes may, and there could be cost and other implications if that were the case.

OLDHAM COUNCIL

Response from Oldham Council

1. Is the guidance in chapter 1 of the Code clear and helpful for public authorities to understand the right of access to information in the FOI Act and how to manage requests on this basis?

   Yes, written in plain English and clear

   Are there any other areas where it would be helpful for this guidance to be more detailed or where it could be clearer?

   1.16 states that requests must be addressed directly to the public authority the applicant is seeking information from – could this be amended to reflect the fact that requests are sometimes send to elected members, and they are passed onto the Council, it would be onerous and not customer friendly to have to contact each customer to tell them to send the same request into the Council directly when in their eyes they probably think they have already

2. Does the guidance about publication of FOI compliance statistics provide enough detail for public authorities to start publishing their own compliance statistics? If further guidance on this would be helpful what should this cover?

   The guidance is clear but makes the assumption that all authorities monitor compliance. I think saying to publish quarterly is reasonable, however, it would be better if it was quarterly in arrears. If current quarters were published then requests received near the end of the quarter would still be within deadline at the time of publication.
   This would mean that an inaccurate picture of performance would be published.

3. Is the guidance about the publication of information about senior pay and benefits clear and helpful? Are there any areas of this guidance where further detail would be useful?

   I think this is clearly cross referenced to the transparency code

4. Does the proposed guidance on vexatious and repeated requests provide the right level of detail about the circumstances in which public authorities might want to consider using section 14? If further guidance on this would be useful what should this cover?

   I believe it does capture some of the key points that have been pertinent to circumstances in which the council has used this exemption. I do believe that

when it comes to vexatious and repeated requests that we continue to look to use this exemption sooner and not as a last resort.

5. Is it helpful to merge the datasets Code of Practice with the main section 45 Code so that statutory guidance under section 45 can be found in one place?

   Yes, it is always better to have related guidance together in one place and in context

6. If you agree the datasets Code should be merged is it helpful to split the datasets guide into a section on release of datasets and a section on guidance on re-use of datasets?

   Yes

7. Are there any other areas in Part I of the Act where it would be helpful to have additional guidance in the Code? If so, what do you think the additional guidance should cover and why?

   Although strictly not a section in Part I of the act, in paragraph 1.1 of the code it might be useful to have a table with the sections and names of the exceptions as a handy quick guide. This means practitioners can have a complete overview of considerations when refusing requests

   Also, what scope would there be to refresh the EIR guides and/or have them as part of the code.

OPEN UNIVERSITY

A - Responses to questions

1. Is the guidance in chapter 1 of the Code clear and helpful for public authorities to understand the right of access to information in the FOI Act and how to manage requests on this basis?

The Open University supports a greater emphasis on the rights of the individual by provision of a delegated, prioritised section of the Code for rights of access.

The following practical steers are helpful:

- Clarification of instances where the request falls outside the legislation (para 1.7, 1.10)
- Applications to social media developments (para 1.17)

However the omission of the previous steer on applications being “purpose blind” could cause confusion on how much Public Authorities can ask about an application. Are there any other areas where it would be helpful for this guidance to be more detailed or where it could be clearer?

It would be helpful to state paragraph 1.21 immediately after paragraph 1.18.

2. Does the guidance about publication of FOI compliance statistics provide enough detail for public authorities to start publishing their own compliance statistics? If further guidance on this would be helpful what should this cover?

The Open University supports the new best practice recommendation for publication of compliance statistics, but considers that quarterly publication would be disproportionate for Public Authorities, such as Higher Education Institutions, who handle medium-small numbers of requests. A threshold would be better employed, with smaller/medium institutions (e.g. up to 500 requests a year) publishing yearly, and larger institutions (e.g. over 500 a year) twice a year or quarterly. Guidance on how to represent partially exempted information would also be helpful.

3. Is the guidance about the publication of information about senior pay and benefits clear and helpful? Are there any areas of this guidance where further detail would be useful?

The Open University considers that the proposed details and frequency of publication of pay and expenses for senior staff are disproportionate.

- The threshold of £90,000 for publication of salary (paragraph 8.9) appears arbitrary. The Open University currently discloses in its financial statements the remuneration of higher paid staff in accordance with the Higher Education Funding Council for England's accounts direction to Higher Education Institutions and the Definition document for universities and other higher education institutions issued by the Information Commissioner's Office, i.e. for staff earning in excess of £100,000. We see no benefit in terms of increased transparency in extending this to cover salaries over £90,000. Alternatively, a threshold relating to criteria of seniority rather than just salary might be considered.
- Additionally, adding further names into the public arena creates additional privacy risks in relation to those members of staff.
- The University also publishes expenses annually for the Vice-Chancellor (Chief Executive Officer) and his/her Executive Team. We see no benefit in publishing expenses more frequently nor in extending this to all senior staff; only a disproportionate administrative burden.

The University is in the process of responding to the Committee of University Chairs consultation on a Draft Remuneration Code and it will be considering changes in practice, in particular around publication of information on benefits in kind, in light of this.

The request for publication in paragraph 8.10 could helpfully indicate examples of how the information may be published, e.g. within existing processes for publishing financial statements.

4. Does the proposed guidance on vexatious and repeated requests provide the right level of detail about the circumstances in which public authorities might want to consider using section 14? If further guidance on this would be useful what should this cover?

The Open University supports inclusion of vexatious and repeated requests in the code, it can be a key area of challenge for us and guidance within a formal code would assist our consideration of vexatious requests. Practical steers such as paragraph 7.2 (it should not considered as a last resort) are helpful. At paragraph 7.9 for example, knowing that the list provided is not exhaustive provides assurance that a public authority may continue to use discretion.

We consider the guidance under this section provides a sufficient level of clarity in the main.

5. Is it helpful to merge the datasets Code of Practice with the main section 45 Code so that statutory guidance under section 45 can be found in one place?

The current arrangement of separate Codes of Practice is difficult to use, a single unified code is preferable.

6. If you agree the datasets Code should be merged is it helpful to split the datasets guide into a section on release of datasets and a section on guidance on re-use of datasets?

The division does bring greater clarity.

7. Are there any other areas in Part I of the Act where it would be helpful to have additional guidance in the Code? If so, what do you think the additional guidance should cover and why?

The foreword in the previous Code gave useful direction on appropriate training and procedures on handling FOI requests. This is useful.

B - Further Comments

Overall The Open University considers that the Code is clear and comprehensive but it is much longer than the previous Code(s) and in many cases seems to be reciting the Act rather than supplying supporting information. A shorter more concise document with links to all relevant ICO guidance and the legislation (rather than repeating the legislation) would be more helpful. Good practice could also be highlighted in the Code, e.g. where more information than is required is published or where different information is brought together, for example, in publishing pay data generally while breaking it down to show gender and race pay gaps.

Further specific comments include:

- The requirement in paragraph 5 of the Code (5.4) for requests for internal review to be completed within 20 days is over prescriptive. However, the amendment to reviews being required to be carried out by another individual rather than a senior individual (5.9) is welcomed as, for us, it keeps the University's flexibility to able to deliver within the deadlines.
- A requirement for clauses (9.9) for all contracts with contractors will be a disproportionate burden, particularly in light of the contract reviews that are already underway in the context of GDPR.

PRODUCERS ALLIANCE FOR CINEMA AND TELEVISION LTD (PACT)

Pact welcomes this opportunity to respond to the Government's consultation on proposed changes to the FOI Code of Practice. It is important that these changes ensure that transparency of public authorities is upheld and that they have clear guidance to make sure they are able to respond to information requests.

Consultation questions

1. Is the guidance in chapter 1 of the Code clear and helpful for public authorities to understand the right of access to information in the FOI Act and how to manage requests on this basis? Are there any other areas where it would be helpful for this guidance to be more detailed or where it could be clearer?

Pact agrees that the guidance in Chapter 1 of the guidance is clear and helpful. We particularly agree that where the information request is not considered under the Act public authorities must clearly explain why the request will not be considered and insist on clarification to be made through other correspondence routes. Presently the wording is 'best practice to provide' rather than the stronger wording of 'should provide'. Making this clearer will ensure public authorities provide as much transparency to their processes and policy information that they hold.

3. Is the guidance about the publication of information about senior pay and benefits clear and helpful? Are there any areas of this guidance where further detail would be useful?

It would be useful for this section to ask public authorities to offer more insight into the methodology behind the pay scales. This will further aide transparency and make sure sources of information and how they are arrived at are clear to the public.

5. Is it helpful to merge the datasets Code of Practice with the main section 45 Code so that statutory guidance under section 45 can be found in one place?

Yes

6. If you agree the datasets Code should be merged is it helpful to split the datasets guide into a section on release of datasets and a section on guidance on re-use of datasets?

Yes we agree that the guidance should be split into two sections. There should also be clarification and or links to the ICO's Datasets guidance or for some of this guidance to be incorporated into the codes of practice. The guidance usefully sets out how to interpret datasets and how public authorities should define this term when deciding how to handle FOI requests. For example it sets out when the collection of electronic information constitutes a data set and when it does not. This level of clarification will help public authorities. There are also further clarifications for public authorities on how to interpret the different criteria.

We would want confirmation that the new FOI code of practice links to this guidance or incorporates the definition interpretations.

7. Are there any other areas in Part I of the Act where it would be helpful to have additional guidance in the Code? If so, what do you think the additional guidance should cover and why?

We also believe there needs to be more clarity behind interpretation of schedule1 part VI of the Act when public authorities like the BBC and Channel 4 are exempt for journalistic reasons. Within the broadcasting industry both public service broadcasters use different interpretations of the exemptions which make it confusing for requesters of information and for the public authority deciding on what and when to withhold information.

Previously the ICO has made decisions based on previous FOI requests and acknowledged and confirmed that Part VI of Schedule 1 to FOIA provides that information held by the BBC and the other public service broadcasters is only covered by FOIA if it is held for 'purposes other than those of journalism, art or literature'. We appreciate that this consultation is only related to Part 1 of the FOIA but if crucial information that the PSBs hold are not being released according to the guidance set out in the new code of practice it will be difficult for information requesters to know at what point the code will not apply.

PUBLIC HEALTH WALES

Public Health Wales welcomes the opportunity to provide input on the best practice guidance set out in the Freedom of Information (FOI) draft Code of Practice to help set a standard for all public authorities when considering how to respond to Freedom of Information requests and provide certainty for Freedom of Information practitioners when responding to requests for information.

Overall, the revised Code seeks to provide public authorities with clear guidance on how to operate their responsibilities under the Freedom of Information Act.

Answers to the questions within the consultation have been collated and responses are below;

1. Is the guidance in chapter 1 of the Code clear and helpful for public authorities to understand the right of access to information in the FOI Act and how to manage requests on this basis? Are there other areas where it would be helpful for this guidance to be more detailed or where it could be clearer?

Answer: The guidance is much clearer than previously. However the guidance around use of 'real name' by a requester could be misinterpreted. The way it is currently written could be interpreted that the Act specifically requires the real name which is not the case. The Act only refers to the name.

More detailed information would be useful around the use of real name.

2. Does guidance about publication of FOI compliance statistics provide enough detail for public authorities to start publishing their own compliance statistics? If further guidance on this would be helpful what should this cover?

Answer: It would be helpful if it were clear whether there is an expectation that this will be published as 'stand-alone' or whether it would be acceptable to publish as part of other documents, such as Board or Committee papers which are in the public domain.

3. Is the guidance about the publication of information about senior pay and benefits clear and helpful? Are there any areas of this guidance where further detail would be useful?

See 2 above

4. Does the proposed guidance on vexatious and repeated requests provide the right level of detail about the circumstances in which public authorities might want to consider using section 14? If further guidance on this would be useful what should this cover?

No comments

5. Is it helpful to merge the datasets Code of Practice with the main section 45 Code so that statutory guidance under section 45 can be found in one place?

Answer: It would be useful to merge the datasets Code but as a chapter and not an annexe.

6. If you agree the datasets Code should be merged is it helpful to split the datasets guide into a section on release of datasets and a section on guidance on re-use of datasets?

See 5 above

7. Are there any other areas in Part 1 of the Act where it would be helpful to have additional guidance in the Code? If so, what do you think the additional guidance should cover and why?

No comments

ROYAL HOLLOWAY, UNIVERSITY OF LONDON

1. Is the guidance in chapter 1 of the Code clear and helpful for public authorities to understand the right of access to information in the FOI Act and how to manage requests on this basis? Are there any other areas where it would be helpful for this guidance to be more detailed or where it could be clearer?

We would like to submit the following feedback on the guidance in chapter 1:

• Item 1.1, bullet point 2, requires that "any person who makes a request to a public authority for information is entitled… to have the information the public authority holds relating to the request communicated to them" (emphasis added). We suggest that 'relating to the request' be amended to 'meeting the description set out in the request' as the current wording may allow for misconstruing of the breadth of information that the authority is required to disclose in response to a request. The suggested wording above mirrors the current wording of the Act.

2. Does the guidance about publication of FOI compliance statistics provide enough detail for public authorities to start publishing their own compliance statistics? If further guidance on this would be helpful what should this cover?

We would request further clarification with regards to the publishing of compliance statistics:

• Should the timeliness of a response be provided as a percentage? Eg. 99% of requests were responded to within the statutory deadline

• The breakdown indicating whether or not the information was held does not provide sufficient detail. Further guidance would be needed as to how to report the following scenarios:

- o Requests where information was partially withheld
- o Requests were information was partially not held by the authority
- o Requests were information was partially not held by the authority, partially

withheld under an exemption, and partially disclosed
o Requests that were refused under section 12 or section 14
o Requests that were withdrawn
o Requests where clarification was requested but not received

• We request that the timescale of reporting be amended from quarterly to annually.

3. Is the guidance about the publication of information about senior pay and benefits clear and helpful? Are there any areas of this guidance where further detail would be useful?

Further clarification is requested with respect of this requirement. We would request further guidance regarding:

• The interpretation of 'management board level' with respect of different sectors to clarify the parameters of staff classed as 'senior' or equivalent to the post of 'Director' for the purposes of this requirement. Should this data be disclosed on the basis of a salary above £90,000 per annum, or on the basis of job title?

• Whether actual salary figures or a pay band should be published.

• Further clarification as to what should be included under expenses and benefits in kind would be welcomed.

• We request that the timescale of reporting be amended from quarterly to annually.

4. Does the proposed guidance on vexatious and repeated requests provide the right level of detail about the circumstances in which public authorities might want to consider using section 14? If further guidance on this would be useful what should this cover?

Further guidance regarding whether and to what extent organisations can take into account the wider context of the communications with the requester (outside of the FOI process) in assessing whether a request is vexatious may be helpful.

5. Is it helpful to merge the datasets Code of Practice with the main section 45 Code so that statutory guidance under section 45 can be found in one place?

Yes

6. If you agree the datasets Code should be merged is it helpful to split the datasets guide into a section on release of datasets and a section on guidance on re-use of datasets?

Yes

7. Are there any other areas in Part I of the Act where it would be helpful to have additional guidance in the Code? If so, what do you think the additional guidance should cover and why?

No comments to make.

RUSSELL GROUP, THE

I am writing in response to the consultation surrounding the revised FOI code of practice and welcome this opportunity to demonstrate our commitment to transparency in this area. While our universities ensure they meet their obligations surrounding FOI, we are concerned that the proposed revisions to the senior executive pay and benefits requirements are not appropriate for higher education providers – in particular, as they are likely to contradict with other requirements on universities.

We recognise the need for remuneration to be fair, appropriate and justifiable and that there should be suitable transparency with regard to remuneration levels and processes.

The Office for Students (established in the HE and Research Act 2017) has been clear about its expectations regarding pay transparency and we anticipate this will now be an ongoing registration condition for universities. As you will be aware, the Committee of University Chairs is also currently conducting a consultation on a revised code of practice in relation to senior remuneration, an action supported by the Universities Minister.

Given that the OfS is now the main regulator for universities, and all will need to comply with the registration requirements it sets, we hope the new FOI guidance will seek to align with the OfS position on senior executive pay and benefits.

SHEFFIELD CITY COUNCIL

Please find below Sheffield City Council's considerations in regard to the revised Code of Practice proposed for issue under Section 45 of the Freedom of Information Act. This response has been produced by the Council's Information and Knowledge Management Team as the Council leads in Freedom of Information and information governance.

The Council has reviewed the terms of reference for the consultation and focused on responding to questions highlighted.

1. Is the guidance in chapter 1 of the Code clear and helpful for public authorities to understand the right of access to information in the FOI Act and how to manage requests on this basis?

Yes, this suggested code provides clear guidance to the handling of requests.

Are there any other areas where it would be helpful for this guidance to be more detailed or where it could be clearer?

Due to the ability of tribunal decisions to change the case law around the handling of FOI requests; the Code in its current suggested draft does appear to provide a good overview. In this regard it may be sensible to expand on the commentary at point 1.11 in regard to the holding of records in back-ups not being valid under FOI when this does in part appear to be contrary to some previous tribunal decisions.

2. Does the guidance about publication of FOI compliance statistics provide enough detail for public authorities to start publishing their own compliance statistics? If further guidance on this would be helpful what should this cover?

Sheffield City Council do currently publish FOI statistics available at https://data.sheffield.gov.uk/Governance/FOI-Compliance-Statistics-For-Sheffield-City-Counc/55sb-eagv. It is clear that the Code expands on this and it would be useful to non-central governmental public authorities to receive further guidance on the envisaged form and generation of such statistics. On review of the government output for FOI statistics that their overarching approach is complex (https://www.gov.uk/government/collections/government-foi-statistics#2017) and likely above those required under the Code. For example the Government statistics include details of occasions where public interest extensions occur which is not covered in the Code.

There are practical considerations on statistic production which would be useful to receive clarification upon. For example in our statistical output we delineate between cases received in a given month/quarter and those closed during the same period as two separate data sources. This allows for prompt preparation of stats at the end of a reporting period rather than waiting for the end of the 20 working day to collate the records on the same cohort of requests as those received; this also means that all late requests are correctly captured even if they are significantly late i.e. outside the 20day period. It would also be useful for the Policy Team's view on the handling of FOI requests which are not valid in terms of the use of a pseudonym or where clarification from a requestor has not been received. Our view would be that such cases should be included in statistical outputs as they do need to be logged and processed under the FOI process in advance of a clarified/ formal request being received. We would tend to leave such requests live for 3 months before closing them down and "clarification not provided by requestor".

Additionally in terms of the responses within the statutory timescale I would assume that this would be a percentage and the actual number of cases reported as per our current published stats. I assume this would not include a requirement to provide enhanced information i.e. average time for compliance etc. In respect to the number of requests where information was withheld, is the intention for authorities to publish metrics on the use of each exemption?

Finally there may need to be further guidance for authorities on the general production of statistics. Within Sheffield City Council we monitor, log and report on all requests received through our FOI channels (defined postal address, FOI email and online FOI form) and those which filter through the many different service areas of the Council i.e. where FOI has been specifically cited by a requestor. There is certainly scope of statistical manipulation were all general written enquiries then considered FOI for statistical purposes including those clearly which should be handled as business as usual.

3. Is the guidance about the publication of information about senior pay and benefits clear and helpful? Are there any areas of this guidance where further detail would be useful?

Yes, this appears clear however we note that there are no exceptions provided from disclosure. Though unlikely, were a member of senior staff to be subject to harassment or other domestic circumstances which would lead to concerns about publication, could this be considered by the authority on making it "exempt" from disclosure i.e. is the Section 40(2) consideration still valid in extreme circumstances where the identity could be anonymised.

Furthermore, is the publication requirement for the exact remuneration amount or are payment band details to be provided up to the current threshold of £150,000 (as per the The Accounts and Audit Regulations 2015)?

4. Does the proposed guidance on vexatious and repeated requests provide the right level of detail about the circumstances in which public authorities might want to consider using section 14? If further guidance on this would be useful what should this cover?

Yes, this is sufficient and should be useful in practical terms with cross review of the ICO guidance and relevant tribunal decisions.

5. Is it helpful to merge the datasets Code of Practice with the main section 45 Code so that statutory guidance under section 45 can be found in one place?

Yes, this provides a single source of guidance which should be more practical due to the linkage to the two regimes.

6. If you agree the datasets Code should be merged is it helpful to split the datasets guide into a section on release of datasets and a section on guidance on re-use of datasets?

Yes, this split appears sensible.

7. Are there any other areas in Part I of the Act where it would be helpful to have additional guidance in the Code? If so, what do you think the additional guidance should cover and why?

N/A

SOUTH HAMS DISTRICT COUNCIL / WEST DEVON BOROUGH COUNCIL

1. Is the guidance in chapter 1 of the Code clear and helpful for public authorities to understand the right of access to information in the FOI Act and how to manage requests on this basis?

A. Yes

Are there any other areas where it would be helpful for this guidance to be more detailed or where it could be clearer?

A. No

2. Does the guidance about publication of FOI compliance statistics provide enough detail for public authorities to start publishing their own compliance statistics? If further guidance on this would be helpful what should this cover?

A. Yes, clear enough

3. Is the guidance about the publication of information about senior pay and benefits clear and helpful? Are there any areas of this guidance where further detail would be useful?

A. Yes, clear enough

4. Does the proposed guidance on vexatious and repeated requests provide the right level of detail about the circumstances in which public authorities might want to consider using section 14? If further guidance on this would be useful what should this cover?

A. It would be useful if it could be suggested that guidance on vexatious and repeated requests could be cross-referenced with the Council's Complaints and Unacceptable Behaviour policies, where these have been approved by the Local Government Ombudsman's Office.

5. Is it helpful to merge the datasets Code of Practice with the main section 45 Code so that statutory guidance under section 45 can be found in one place?

A. Yes

6. If you agree the datasets Code should be merged, is it helpful to split the datasets guide into a section on release of datasets and a section on guidance on re-use of datasets?

A. Yes

7. Are there any other areas in Part I of the Act where it would be helpful to have additional guidance in the Code? If so, what do you think the additional guidance should cover and why?

A. No

STRATFORD-ON-AVON DISTRICT COUNCIL

Thank you for providing the Council with an opportunity to respond to this consultation, which has been approved by our Audit and Standards Committee.

In answer to the specific questions raised, our response is as follows:-

1. We believe that the revised draft guidance is generally clear and helpful in ensuring the the Council and its employees understand the right of access to information under the FOI legislation and how to manage day to day requests.

2. However, it would be helpful if you could clarify whether the revised guidance is intended to replace the current guidance in its entirety, or whether this is supplementary to the current guidance.

3. The proposal in relation to the publication of FOI statistics is accepted, and in fact the Monitoring Officer already reports to the Audit and Standards Committee on a quartery basis wit these details, and his reports are published on the Council's website. However, please note our general comments under the general comments section below.

4. The proposal for publication of information about senior officer pay and benefits is clear, and of course local authorities are already required by legislation to provide an annual pay statement that takes many of these details into account.

5. We are grateful for the additional guidance provided in respect of vexatious requests, which the FOI Commission quite rightly raised as a major issue for public authorities, including this Council.

6. It is sensible to merge the guidance on datasets with the main guidance issued under section 45 of the Act. Following on from our comments under question 5, we would support the idea of splitting the datasets guidance into a section on release of datasets and a section on guidance for the re-use of datasets.

7. We do not have need for discussion of any further areas in Part 1 of the Act to be included within the guidance.

General Comments

When taking the proposal relating to question 2 together with some of the other additional duties placed on public authorities as proposed in the consultation document, the Council is likely to struggle to find the extra resources required to fulfil these responsibilities. This comes at a time when additional resources are also required to comply with the implementation of major changes to data protection legislation in May this year, together with ongoing commitments in relation to the appointment of a Data Protection Officer.

TRANSPORT FOR GREATER MANCHESTER

Please find below TfGM's response to the FOI Code of Practice Consultation.

1. Is the guidance in chapter 1 of the Code clear and helpful for public authorities to understand the right of access to information in the FOI Act and how to manage requests on this basis?

Yes, the guidance in chapter 1 of the Code is clear and helpful.

Are there any other areas where it would be helpful for this guidance to be more detailed or where it could be clearer?

At 2.5 it states that someone who is unable to make the request in writing may be able to make their request over the phone, for it to be written down, sent to the application for confirmation, and for the applicant to respond with written confirmation. We do not understand how an application whose disability prevents them from submitting a request in writing can possibly provide 'written confirmation' of the request taken over the phone, so we would suggest further guidance or clarification on this point.

At 5.12 it is not clear whether this is also the case where a request for internal review is out of time (5.3), so we would suggest clarification on this point.

2. Does the guidance about publication of FOI compliance statistics provide enough detail for public authorities to start publishing their own compliance statistics?

No, further guidance is required.

If further guidance on this would be helpful what should this cover?

It is clear that number of requests received within each quarter is the number received within the dates covering the quarter. However, it is not clear whether the following questions are about these requests received (and therefore there may be a delay in publication whilst all are responded to, internal reviews concluded etc.), or whether it is about responses sent during that same quarter (different requests to those received) and internal reviews started or finished in that quarter. Clarity is required to ensure consistent publication by all public authorities to allow comparisons to be drawn across sectors.

3. Is the guidance about the publication of information about senior pay and benefits clear and helpful?

No, further explanation is required.

Are there any areas of this guidance where further detail would be useful?

It would be useful to explain why the information required for publication is different to the level of information required for publication under the Local Government Transparency Code. In particular the threshold salary for publication, and in turn the publication of names and job titles. There are some “local authorities” like ourselves who are not covered by the Transparency Code, and it would be useful to understand why something like the publication of names of Directors earning over £90,000 is so much lower than the £150,000 threshold for authorities of similar size and type.

4. Does the proposed guidance on vexatious and repeated requests provide the right level of detail about the circumstances in which public authorities might want to consider using section 14?

If further guidance on this would be useful what should this cover?

7.16 – if a request for an internal review has been refused as out of time, then would it be considered unreasonable to accept a repeated request for the original information? It so, this would provide a method for someone to get around the internal review deadlines. We would suggest including some guidance on this point.

5. Is it helpful to merge the datasets Code of Practice with the main section 45 Code so that statutory guidance under section 45 can be found in one place?

Yes

6. If you agree the datasets Code should be merged is it helpful to split the datasets guide into a section on release of datasets and a section on guidance on re-use of datasets?

Yes

7. Are there any other areas in Part I of the Act where it would be helpful to have additional guidance in the Code? If so, what do you think the additional guidance should cover and why?

No

UK OPEN GOVERNMENT CIVIL SOCIETY NETWORK

Commission Questions

Question 1: Is the guidance in chapter 1 of the Code clear and helpful for public authorities to understand the right of access to information in the FOI Act and how to manage requests on this basis? Are there any other areas where it would be helpful for this guidance to be more detailed or where it could be clearer?

It is hugely important for the Code of Practice to be clear and precise for public officials.

It should be noted that the Information Commissioner's Office (ICO) has published detailed guidance for those working for public authorities with day-to-day responsibility for dealing with freedom of information requests. The guidance includes frequently asked questions and uses practical examples to explain how to apply the FOI Act.

The Code of Practice should be fully aligned with the ICO guidance and most recent jurisprudence, in order to avoid confusion or misunderstandings about how to deal with freedom of information requests.

A fully aligned Code of Practice with ICO guidance will help to reduce doubt or uncertainty in how to deal with requests for public servants and it will encourage a more uniformed implementation of the FOI Act across public authorities. Clear guidance overall should result in a better experience for citizens too, as requests are responded to in a consistent manner across public authorities.

Below we provide specific comments, paragraph by paragraph:

Paragraph 1.1

The FOI Act and relevant jurisprudence outline there is a general presumption of openness. The guidance must ensure that this principle is not lost in the explanations around when to not communicate information to requesters. For example in paragraph 1.1, the phrase "or if the request can be refused under sections 12 or 14" could be understood by public officials to encourage them to find reasons to not publish information. This phrase should be changed to "or if sections 12 or 14 apply to the request".

Paragraph 1.10 and 1.11

Paragraph 1.10 correctly describes the position under the Act, and is in line with the approach of the Commissioner and Tribunal.

Whilst paragraph 1.11 is in line with the Act, members of the OGN would find it useful to know why backup files are excluded.

Paragraph 1.14

The FOI Act requires requesters provide their names and not use pseudonyms, which is reflected in the Code of Practice. Here, the Code of Practice should be fully in line with the ICO's guidance and not unduly narrow the implementation of the Act.

The Information Commissioner's Office is clear that a public authority should accept names provided at face value if there is no obvious reason to believe that a pseudonym is being used. The ICO adds:

"Whilst this may mean that some pseudonymous requests will slip through the net, we would not want to see a situation where authorities routinely carry out checks on requesters' identities. The Act provides a public right to information, not a right limited to certain individuals."

Paragraph 1.26

This paragraph, as with the Code of Practice as a whole, should encourage public authorities to ensure that information is communicated in open formats (such as .odt, .ods, .odp), wherever possible. This is particularly important when text or numerical data is released in image formats which make it difficult to reuse the data or information.

Paragraph 2.7

As with the explanation regarding paragraph 1.14, the Code of Practice should follow the ICO guidance on the matter of using a real name or pseudonym, in order to not unnecessarily restrict the right of access to information.

Paragraph 4.7

Where the public authority requires an extension, it should not only inform the requester of this, it should provide the applicant with a new deadline for when they should receive a response. This should not be done "ideally", but rather, should be done as a matter of routine unless it is not possible to do so. Requesters should not be left with uncertainty as to when their requests will be dealt with.

Paragraph 5.1

The OGN recommends that each public authority as a matter of routine, rather than as best practice (as currently stated) have a procedure in place for dealing with complaints about the handling of requests from the public. This will help to ensure public authorities avoid mishandling requests in the first place, and reassure citizens that their complaints will be addressed and that they do not need to follow up immediately with a complaint to the ICO.

Paragraph 6.4 and 6.5

The Code of Practice should make clear the purpose of the 'cost limit' regarding FOI

requests. This means making clear that the cost limit only applies to searching and drafting the response to requests, but not the redaction of information. The Code of Practice should be fully aligned with the advice produced by the ICO.

It is also important to note that public authorities should not be encouraged to aggregate requests as a way to ensure that the cost limit is exceeded and therefore have requests refused for that reason. Aggregation of requests should be limited insofar as it helps to actually reduce the overall administrative burden of searching and responding to requests.

Question 2: Does the guidance about publication of FOI compliance statistics provide enough detail for public authorities to start publishing their own compliance statistics? If further guidance on this would be helpful what should this cover?

It is helpful for public authorities to have guidance on how to publish their compliance statistics for the public. The types of information that should be included as part of these statistics should also include:

- The number of requests that had only some information granted (and some withheld)
- The number of times that each exemption to access was applied to requests (at the initial stage and after an internal review)
- The number of vexatious requests received and rejected.

Public authorities should publish their statistics using comparable time periods. Comparable information will enable public authorities to identify the most effective authorities and therefore learn from their methods in order to also improve their implementation of the UK FOI Act - a ‘race to the top’. It will also help to ensure public authorities are held to account if they are not adequately dealing with requests.

This information should be published in one publically-accessible online repository (a ‘one-stop shop’) as well as, or in place of, publishing this information across departmental websites. Departmental websites should include links to a ‘one-stop-shop’ webpage so that users know where to get the full data.

As this kind of comparable data is brought together by organisations like the Institute for Government, it does not seem to be an impossible task for government to produce comparable data on a (minimum) quarterly basis.

Furthermore, regardless of where the information is located, it should be published and downloadable in an open and standardised format to enable comparability, further ensuring accountability in the implementation of the Act.

Question 3: Is the guidance about the publication of information about senior pay and benefits clear and helpful? Are there any areas of this guidance where further detail would be useful?

As with compliance statistics, efforts should be made to make sure this information is clear and accessible to the public.

Furthermore, the information should be published and downloadable in an open and standardised format wherever possible (across authorities if not in a 'one-stop shop'). The data should be published in a way that is comparable wherever possible.

Question 4: Does the proposed guidance on vexatious and repeated requests provide the right level of detail about the circumstances in which public authorities might want to consider using section 14? If further guidance on this would be useful what should this cover?

Vexatious requests can be a burden on public authorities, their time, and therefore, taxpayers' money. However, it is important that refusing vexatious requests is not interpreted or encouraged in a way that leads to refusing to answer legitimate requests that are complicated, sensitive, or uncomfortable for the public authority to answer.

The establishment of whether a request is vexatious or not should not encourage public authorities to require all requesters to explain or give reasons for their request.

Again, the ICO provides useful information for public officials, on how to identify vexatious requests, and the Code of Practice should be fully in line with this guidance.

Question 5: Is it helpful to merge the datasets Code of Practice with the main section 45 Code so that statutory guidance under section 45 can be found in one place?

Streamlined and readily-accessible guidance on datasets is a sensible approach to take. It makes sense to have one set of guidance for datasets that outlines the rules for this type of information for when the FOI Act applies and for when the PSI Regulations apply.

Question 6: If you agree the datasets Code should be merged is it helpful to split the datasets guide into a section on release of datasets and a section on guidance on re-use of datasets?

The OGN understands the benefits that a single set of guidance provides to public authorities when meeting obligations under the FOI Act and PSI Regulations. Having information in one location gives civil servants the confidence that they have the information they need to take decisions on how to deal with requests for datasets.

Guidance by the National Archives and the Information Commissioner's Office should be considered as part of the guidance on dealing with datasets. Any guidance in the Code of Practice, or annexed to it, should be in full alignment with their comprehensive guidance on the FOI Act and PSI Regulations.

Question 7: Are there any other areas in Part I of the Act where it would be helpful to

have additional guidance in the Code? If so, what do you think the additional guidance should cover and why?

The OGN recommends that the ICO be involved in the development of the Code of Practice, to ensure thorough and full alignment with established ICO guidelines and best practice.

UNIVERSITIES AND COLLEGES EMPLOYERS ASSOCIATION

UCEA's response focuses very particularly on question 3 of this consultation, which is:

Is the guidance about publication of information about senior pay and benefits clear and helpful? Are there any areas of this guidance where further detail would be useful?

Competing requirements for pay transparency within the HE sector

A consultation on a new regulatory framework for HE providers in England, run by the Department for Education on behalf of the Office for Students (OfS), closed in December; the outcome is awaited. The consultation introduces senior staff remuneration as a value for money issue. It proposes a new ongoing registration condition for the OfS, requiring providers to publish the number of staff paid over £100,000 per annum, and to explain their justification for pay above £150,000, in their annual accounts. The consultation document states that the OfS will be working alongside sector bodies to improve performance and that the Government has called on the sector to work through the Committee of University Chairs (CUC) to develop and introduce a Remuneration Code. In parallel, the CUC is now consulting on Draft Remuneration Guidance, which includes a HE Remuneration Code for senior post holders. It defines senior post holders as the Head of Institution (HoI), usually all or some members of the senior executive team and possibly some other senior staff who report directly to the HoI. This consultation ends on 12 March.

Against this background of a proposed new regulatory requirement, supported by a CUC HE Remuneration Code, a revised Freedom of Information (FOI) Code that widens its scope to include publication of information about senior pay and benefits is unhelpful for the sector. This is especially so because it includes a different salary threshold, and appears to cover a different set of staff, than the proposed regulatory framework. It is important that Government departments and agencies work together to ensure a clear and unified approach to pay transparency requirements for the sector. We urge the Government to refrain from introducing new requirements without first considering the outcome of the CUC's consultation and giving HEIs the opportunity for self-regulation exercised in accordance with the final CUC Code and the OfS requirements.

The level of post to be covered

The Code creates uncertainty as to exactly which posts are covered. It refers to "Senior Executive Pay and Benefits", then goes on to direct public authorities to publish the pay and benefits of "Senior staff at Director level and equivalents" (covering salaries of £90,000 above) and thirdly to benefits in kind of "Director level and equivalents". It is unclear whether the omission of the words "Senior staff at" for this third requirement means that there is a different threshold or whether it is a

drafting error. The Code then refers to the Civil Service Director grades of SCS2 and above as the posts within central government departments for which pay data should be published, and suggests a read-across to this, for other public authorities, of a minimum equivalent of 'management board level'. Moreover, HEIs are currently unclear as to the meaning of these different descriptors in the context of the HE sector. The inconsistencies are most unhelpful and would doubtless lead to different approaches being taken by different sectors and different employers within a sector. We urge the Government to ensure that the final Code is more tightly defined and consistent in its definitions regarding the level of staff to be covered, taking into account the different structures of the various types of organisations covered by the FOI Act.

HE employers accept the principle that there should be appropriate and sufficient transparency in senior executive remuneration. The current ambiguity as to the level of post for which pay information should be published, means that HEIs are unclear whether posts that pay £90,000 or above, but are not on the senior executive team, are included. In HEIs, most staff paid above £90,000 (76.2 per cent[1]) are academic staff performing teaching or research duties. They do not operate as "directors" nor do they operate at executive board level. Remuneration differs significantly from one subject area to another. Nearly one third (33 per cent) of academics earning over £90,000 are concentrated in four subject areas: business, clinical medicine, bioscience and economics. Therefore, publication of salaries of academic staff earning more than £90,000 at an HEI would show more about the fields in which it is active than about the extent to which it is paying above or below market rates for its staff.

It is not clear why a threshold of £90,000 has been chosen. £100,000 is the long-standing benchmark above which HEIs are required by HEFCE to publish salaries in their annual financial statements.

Finally, it is not clear whether publication of exact salaries is required or publication of numbers of staff in salary bands (for example £10,000 bands, in line with financial statement reporting). The requirement to publish names and job titles is also unclear: are these to be matched to salaries, or published as a separate list of individuals earning above £90,000.

Impact on recruitment, retention and pay inflation

Publication of names, job titles and salary details of academic posts over £90,000 would make it easier for competitors to seek to attract staff through offering higher salaries. This may create a potential adverse impact on recruitment and retention of talent and the creation of salary inflation. It could damage the ability of HEIs in the UK to attract and retain talent compared to global competitors, as global institutions seek to attract the best research academics with more competitive salaries. Similarly it would likely create greater competition across the UK for the same staff. Affecting the supply and therefore the quality of senior academic staff or the creation of an inflationary effect on salaries would be neither in the student or the public interest.

This argument is supported by case law. In Kings College London v Information Commissioner (EA/2014/0054) the Tribunal considered a FOI request for the specific job titles and salary bands of all staff earning over £100,000 in £10,000 salary bands. Initially the ICO ordered KCL to disclose the information but, on appeal, it was ruled that:

a). although it was fair to publish the salaries of professional services staff (PSS) who

are on the executive body of the University, it was unfair to publish this information about PSS who were not [ss 96 and 102]; and

b). although it was accepted that the disclosure of PSS pay would not be likely to affect the commercial interests of the University, disclosure of academic staff pay would harm such interests [ss 18 and 129].

To protect the global competitiveness of the sector and avoid increasing staff turnover and salary costs, UCEA proposes that the section 43(2) FOIA exemption - that "Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it)" - should continue to apply to the publication of salaries within the sector below senior executive level.

Potential for Data Protection breaches

The draft Code requires public authorities to include names and job titles when publishing salaries. Clarification is needed as to whether this extends to expenses and benefits in kind. More generally, HEIs have expressed concerns about the tension between the recommended minimum reporting requirements in the Code and an individual's rights to protection under the Data Protection Act and General Data Protection Regulation. Section 40 of the FOIA exists to protect the personal data of those working for organisations subject to the FOIA. Wherever personal data is disclosed under the FOIA there is a requirement to ensure that a lawful basis under Schedule 2 of the Data Protection Act is met and that any disclosure would not be in breach of Principle 1 - disclosures of personal data must be 'fair'. This may leave HEIs vulnerable, either to complaints and litigation in relation to data protection breaches, or to action by the ICO. In a 2015 FOI decision notice, the ICO upheld a decision of Kings College London, to withhold salary information for thirty academic staff under section 40(2) of the FOIA. The basis of this decision was that the information was personal data, the academics would have a strong and reasonable expectation that their salary information would not be disclosed by their employer, and there was no legitimate public interest in the disclosure of individual salary information.

There is also a concern that the positive and beneficial open access nature of the HE sector, which leads many academic and non-academic staff to make their contact details and social media accounts readily available and public, could leave staff at risk of abuse. There has been a significant focus on senior pay within HEIs; some commentary and online reaction has been very personal. HEIs need to consider the wellbeing of their staff at the same time as being transparent about public spending.

Administrative/bureaucratic burden

We highlight a concern, that compliance with a FOI Code that sets a different threshold for publication schemes than those within the regulatory framework would create a disproportionate burden on HEIs.

HEIs are concerned also about the requirement under the Code to publish expenses quarterly. Annual publication is considered to be more proportionate in terms of the volume of work that it will create to collate the information. Annual reporting would tie in with the preparation and disclosure of the HEI's accounts. It is also likely to be more accurate, because staff do not always submit expenses claims at the point at which they are incurred.

All HEIs will have policies on business expenses which ensure value for money and proper use of public money. Simply publishing lists of individuals' expenses without any commentary will not be meaningful. Expenses are often a direct consequence of the nature and requirements of a role, rather than illustrating any particular excess. For example, Vice Chancellors and other senior University executives travel regularly for the benefit of their institution. It is accepted that individual institutions would be able to voluntarily add context around the particular role of a member of staff, however, this is likely to further add to the burden of publication administration.

Hospitality

Some HEIs have highlighted a view that some business hospitality expense should be treated as highly confidential – particularly with regards to high profile fundraising projects and events. Publishing details of hospitality provided by senior leaders within HEIs could lead to commercially sensitive details entering the public domain. Guidance on how to cost hospitality received and guidance on what should/should not be included, would be helpful.

Conclusion and recommendations

The draft Code is unclear as to the level of staff whose salaries are to be included in publication schemes. If the requirement is to publish salaries of staff below senior executive level, particularly academic staff, the potential negative consequences include:

i) staff never before subject to such a requirement seeing the publication of their salary;

ii) individual academics being deterred from taking up appointments in the UK;

iii) poaching of senior academics and executives by UK and international employers able to identify individuals' precise remuneration packages, leading to salary inflation and loss of talent;

iv) HEIs exposed to risks of complaints of data protection breaches;

UCEA urges the Government to amend the Code to make it clear that publication schemes should cover the pay and benefits of those at senior executive level only. UCEA would be pleased to assist in advising on an appropriate definition of senior executive roles within the HE sector for this purpose.

The Code should not place reporting requirements on HEIs that contradict those that will in the coming few months be required of the HE sector in the new OfS regulatory framework and the incoming CUC remuneration code for senior post holders, both of which are being developed specifically for the HE sector.

The pay transparency requirement for all staff outside of the senior executive team should be as currently required in providers' annual financial statements, i.e. anonymised through use of broad salary bands for all staff paid over £100,000.
If a £90,000 threshold were used in the FOI Code, it should be very clear that the threshold is a £90,000 salary as well as membership of the senior executive team.

UNIVERSITIES UK

Universities UK recognises the importance of public confidence in the transparency and probity of institutional governance and accountability mechanisms, and our members' institutions strongly support initiatives that promote openness and transparency.

A new regulator for higher education in England, the Office for Students (OfS) has been created as part of the wider regulatory changes brought in by the Higher Education and Research Act 2017. The scope of the OfS's remit and powers will be clearer once the Government has responded to the consultation on the regulatory framework. However, the information requirements of the OfS proposed in the consultation would overlap, and potentially conflict with the revised Code of Practice. (The consultation on the new regulatory framework for higher education includes a proposed condition of registration, E3: "The provider must provide to the OfS and publish in their annual financial statements information on the number of its staff members earning a basic salary of over £100,000 per annum. For staff earning a basic salary of over £150,000, this information must include details of total remuneration, and an explanation of how these remuneration packages were decided and justified." The condition will be confirmed when the final regulatory framework is published.)

Universities UK proposes that the Information Commissioner works with the OfS to ensure that the information requirements set out by the OfS are both proportionate and consistent with the revised Code of Practice.

Consultation questions

Universities UK's response to the individual consultation questions are set out below.

1. Is the guidance in chapter 1 of the Code clear and helpful for public authorities to understand the right access to information in the FOI Act and how to manage requests on this basis? Are there any other areas where it would be helpful for this guidance to be more detailed or where it could be clearer?

No specific comments.

2. Does the guidance about publication of FOI compliance statistics provide enough detail for public authorities to start publishing their own compliance statistics? If further guidance on this would be helpful what should this cover?

No specific comments.

3. Is the guidance about the publication of information about senior pay and benefits clear and helpful? Are there any areas of this guidance where further detail would be useful?

The sector is strongly committed to the transparency and probity of institutional governance and accountability mechanisms. The Committee of University Chairs (CUC) has developed a new remuneration code of practice that is currently out for consultation. Once agreed in Spring 2018 we will work with CUC to ensure institutions can demonstrate they meet the requirements of the new code, specifically that they publish annual statements of how they have complied or otherwise achieved alignment with the principles of probity in the setting of executive pay.

As noted above, the Office for Students has proposed a number of information

requirements on senior pay in its consultation on the new regulatory framework. It is important that the sector is subject to a clear, consistent set of information requirements over the publication of information about senior pay and benefits. To that end, Universities UK proposes that the Information Commissioner works with the OfS to ensure that any information requirements set out by the OfS, further to its current consultation, are consistent with the revised Code of Practice.

4. Does the proposed guidance on vexatious and repeated requests provide the right level of detail about the circumstances in which public authorities might want to consider using section 14? If further guidance on this would be useful what should this cover?

No specific comments.

5. Is it helpful to merge the datasets Code of Practice with the main section 45 Code so that statutory guidance under section 45 can be found in one place?

No specific comments.

6. If you agree the datasets Code should be merged is it helpful to split the datasets guide into a section on release of datasets and a section on guidance on re-use of datasets?

No specific comments.

7. Are there any other areas in Part I of the Act where it would be helpful to have additional guidance in the Code? If so, what do you think the additional guidance should cover and why?

No specific comments.

UNIVERSITY COLLEGE LONDON

Having read the Consultation on revisions to the FOI Code of Practice and noted question 3 of the Consultation, UCL would like to make the points set out below.

1. We have focused our attention on clause 8.9, which covers the publication of information on Senior Executive Pay & Benefits; this reads:

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.*

2. We find bullet points 1 and 3 above on Pay in clause 8.9 difficult to follow and unclear, particularly when read in conjunction with relevant case law in the area.

3. Specifically, clause 1 on Pay is too broadly drafted and would cover staff earning

£90k and above, but without distinguishing between:

i. those staff who are *academic* and those who are *professional services staff* (PSS); or
ii. those *PSS who on the executive body of University* and those *staff who are not*. Such distinctions are important factors to consider when publishing guidance on University pay, as expectations of staff around having their personal information, especially sensitive information like salaries, put into the public domain are quite different. These expectations should be central to any consideration of what is 'fair' under the Data Protection Act 1998 (DPA).

4. Further, the clause on Pay is not in accordance with the case law in the area. In Kings College London vs Information Commissioner (EA/2014/0054), the judge found that:

i. although it was fair to publish the salaries of PSS who are on the executive body of the University, it was unfair to publish this information about PSS who were not [ss 96 and 102]; and

ii. although it was accepted that the disclosure of PSS pay would not be likely to affect the commercial interests of the University, disclosure of academic staff pay would harm such interests [ss 18 and 129]

We feel that it is important that this guidance should consider relevant case law in the field.

5. We hold the view that both bullet points 1 and 3 above is not in accordance with the degree of protection that the DPA affords individuals. There is good authority that the presumption of disclosure that underpins Freedom of Information Act 2000, which underpins the requirement of public authorities to publish information in their Publication Schemes, does not overturn the primacy of the DPA with regard to protecting their right to privacy with respect to the processing of personal data; this has been emphasised by Lord Hope in Common Services Agency v Scottish Information Commissioner.

6. The University already has established mechanisms for publishing information on senior staff pay that serves the need for transparency. In our Financial Statements the numbers of staff earning over £100k are published in aggregated form. To publish further information, such as names and job titles, seems disproportionate when balanced against the reasonable expectations of privacy that should be accorded to such staff under the DPA.

7. We also find bullet points 1 and 3 on Pay and Benefits in Kind unclear in terms of how they work with other regulatory drivers for transparency. For example, the Office for Students (OfS), the new regulatory and competition authority for the Higher Education sector, has proposed publishing the job descriptions of posts with salaries over £150k in anonymised form. Competing requirements for transparency leave doubts as to which authority should be followed and we urge a unified and clear approach towards transparency, or at least guidance on how we should follow different regulatory stipulations.

8. For the reasons above we believe that the bullet point 2 is unclear and unfair and needs redrafting.

UNIVERSITY OF BIRMINGHAM

3. Is the guidance about the publication of information about senior pay and benefits clear and helpful? Are there any areas of this guidance where further detail would be useful?

The University of Birmingham recognises the need for transparency on senior pay and benefits. As an institution, we have already taken steps to further enhance our publication of information about pay and benefits of senior staff: our Annual Report (available here: https://www.birmingham.ac.uk/Documents/finance/UoB-Annual-Accounts-2016–17.pdf) includes remuneration of staff paid more than £100,000 per annum, including members of the University's Executive Board (at page 55). Our Corporate Governance Statement in the Annual Report includes details of the consideration made by our Remuneration Committee in its determination of senior staff remuneration, including the range of indicators used to decide whether remuneration is justified. In light of the concerns expressed below in relation to the proposed guidance about the publication of information about senior pay and benefits, the University is of the view that its current publication scheme delivers sufficient transparency regarding the pay and benefits of senior staff.

Definition of senior staff

The guidance is unclear and unhelpful in relation to its definition of senior staff and the rationale for setting the salary threshold for those staff at £90,000. The guidance variously describes senior staff for the purposes of reporting as being those

a. "primarily those at Director level (SCS2) and above";
b. "at management board level";
c. "at Director level and equivalents";
d. in receipt of "salaries of £90,000 and above".

The absence of a precise definition of senior staff is likely to lead to confusion and a lack of consistency of reporting by public authorities. The lack of a clear rationale for setting the salary threshold for senior staff for the purposes of reporting at £90,000 makes it difficult to determine the precise intention of the proposal. Is the public interest best served by publishing pay and benefits for staff at "Director level (SCS2)", at "management board level" or where those staff are in receipt of salaries of £90,000 or above? To ensure consistency of definition and application, the University is of the view that the clearest and most helpful definition would be a salary threshold. In the absence of clarity about the precise intention of the proposal, it is difficult to determine what that threshold should be but in the absence of any coherent argument to the contrary, the University is of the view that the guidance would be most clear and helpful if the current salary threshold, of £100,000 per annum, should be retained. The University's proposal is consistent with the approach proposed by the Department for Education, on behalf of the Office for Students, in its current draft regulatory framework. In its response to the Department for Education's request for feedback on the proposal as it relates to reporting on senior staff remuneration as a condition for registration as an approved provider of Higher Education services, the University indicated its support for the publication of information about senior pay above £100,000 per annum.

We do not support an approach that would require only to include staff at management board level and exclude academics. Since it is professors who teach students and lead their subjects who make up the majority of senior staff, it would be divisive to the University community and would be subject to confusion about definition (many fulfil both roles, for example of a Professor who is also a Head of School).

The guidance recommends that in relation to pay, the names and job titles of senior staff should be included. It is unclear as to whether this would require public authorities to disclose the pay of individual senior staff by publishing the name, job title and pay of individual senior staff or whether public authorities could comply with this recommendation by publishing the number of senior staff in receipt of pay above a salary threshold in bands of £10,000 (as currently) and then list the names and job titles of those staff separately.

It is also unclear from the proposed guidance as to whether the requirement to include names and job titles would also apply when reporting on expenses and benefits in kind.

We are concerned that the publication of such detailed information at an individual level would undermine our ability to compete in an international market for staff. Publication of individual salaries would make it easier for competitors to seek to attract staff through offering increased salaries. Consequently, the current guidance would present a significant risk of salary inflation that would be contrary to the public interest.

We support the need for greater transparency in senior staff remuneration but have concerns about the regulatory burden that would be imposed by the detailed requirements on public authorities to publish in their annual financial statements information on individual pay and benefits for senior staff. This would particularly be the case if the salary threshold for reporting was set at £90,000 per annum. We currently employ 233 staff who are in receipt of salaries in excess of £90,000 per annum. The publication of the individual pay and benefits of each of these staff would be very onerous, and since many on this level of pay are senior academics, or NHS clinicians, this approach will lead to lengthy and repetitive documents. This is particularly true for a university with a large Medical School, such as Birmingham.

We are also concerned that the guidance as drafted is contrary to the Data Protection Act. Schedule 1 to the Act requires that “personal data shall be obtained only for one or more specified lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.” The pay and benefits of individual staff constitute personal data. While the pay and benefits of Vice-Chancellors are already published this is considered reasonable and in the public interest given the significant public office Vice-Chancellors occupy. The same argument could not be sustained in relation to a Professor or a Senior Administrator, whose pay and benefits would be covered under the proposed guidance. Disclosure of that data in the manner outlined in the guidance without the authority of the individual staff member would be contrary to the principles of the Data Protection Act. Senior staff remuneration should take into account the size and complexity of the public authority, its performance across a range of strategic objectives (including, in the case of a University, education, research, local and international partnerships, social and economic benefits), and the global and highly-competitive nature of recruitment to senior leadership positions in higher education. An autonomous institution must be free to set its remuneration levels to attract and retain such staff, since they are key to the academic performance of the University and its reputation, all of which is in the student and broader public interest.

Rather than requiring the publication of highly-detailed and prescriptive information about individual pay and benefits, the public interest is best served by public authorities being transparent about their remuneration policy, its application and

outcomes at the institutional level including details as to how decisions on senior pay have been reached. Public authorities should be expected:

a. to have a Senior Pay Review policy in place which is reviewed annually by Remuneration Committee and approved the authorities governing body;

b. to include information in Annual Report and Accounts on senior staff pay which includes narrative on the remuneration process for senior staff and the overall justification for rewards, and relevant benchmarks, for example on Vice-Chancellor's pay as a percentage of turnover; and,

c. as now, publish numbers above £100k in £10k bands.

UNIVERSITY OF EXETER

1. Is the guidance in Chapter 1 of the Code clear and helpful for public authorities to understand the right of access to information in the FOI Act and how to manage requests on this basis? Are there any other areas where it would be helpful for this guidance to be more detailed or where it could be clearer?

   This guidance is very useful and considered to be sufficient.

2. Does the guidance about publication of FOI compliance statistics provide enough detail for public authorities to start publishing their own compliance statistics? If further guidance on this would be helpful what should this cover?

   The guidance provides enough information to start publishing the FOI statistics, however under Section 8 (Compliance Statistics) it would be beneficial to have additional guidance on the following points:

   - The number of requests where the information was granted
   - The number of requests where the information was withheld

   Many FOI responses have a combination of partially applied exemptions and partially disclosed information. In addition, some of the exemptions that can be applied (such as Section 21of the FOIA, where the data can be accessed from the public domain) do not result in the information being withheld, but the requestor does not get the response expected.

   Additional guidance would be beneficial to enable public authorities to publish consistent information. It would also be useful to provide clear guidance to the public on the difference between their request being met and access to data being granted.

3. Is the guidance about the publication of information about senior pay and benefits clear and helpful? Are there any areas of this guidance where further detail would be useful?

   Context

   Higher Education is a regulated sector but other regulated sectors do not have to publish such detailed information about their senior team. The sector is already engaged in consultation with the Office of Students, the new regulator, in respect

of publishing requirements around a number of areas and also with the consultation being undertaken by the Committee of University Chairs (CUC) on a higher education remuneration code. We feel the FoI Code should be align with these, especially the requirements of the OfS as the HE regulatory body, to prevent overlap and confusion. There are also other reporting requirements around the gender pay gap, pay ratios and senior pay.

Publication of such specific information about an extensive number of staff will have significant knock-on effects including demotivation and negativity, increased staff turnover as recruitment agencies will be have more information to be able to entice staff to better-paid jobs within and outside the sector. This will almost certainly lead to an increase in staff costs resulting in funds being diverted away from Teaching and Research students.

Addressing the more onerous publishing requirements as detailed in the revised Code will also require resourcing and lead to an increase in costs.

Specific comments

The guidance takes a broad-brush approach to Executive Pay and Expenses. This is a sensitive subject which would benefit from being addressed in a far more nuanced manner. The Information Commissioner's Office (ICO) produces Definition Documents which detail the minimum requirements for disclosure of information through an organisation's Publication Scheme. Through these, the ICO acknowledges that different sectors require different approaches. Based on sector, it provides definition documents for different organisations e.g. the education section contains definition documents for higher education institutions, colleges of further education, schools etc. It would therefore be more appropriate to include guidance in these documents in order to tailor it according to the relevant sector.

The guidance in the revised Code is not in line with the guidance in the Definition Document for Higher Education Institutions (DDHEI). It widens the DDHEI definition of senior staff to include those who are not on the Senior Management Team and this will significantly increase the number of staff within that category. It is also not clear what "Director-level or equivalent" is considered to be within the context of Higher Education and this will require clarification. That said, it is strongly our opinion that publication requirements should cover "senior staff at Director-level and equivalents" as defined by the institution and not other employees with "salaries of £90,000 and above".

The proposals imply that organisations will have to publish actual salary, rather than within bands. This is a major shift from both previous guidance and decisions made by both the Information Commissioner's Office and the First-Tier Tribunal.

All the recommendations in Chapter 8 of the revised Code involve the publishing of personal data. This raises issues around personal privacy and the Data Protection Act 1998 (DPA), particularly in relation of expectation and fairness. Staff who to date have had no expectation that their salary information will be published because their role does not fall within the current definition of senior staff would be facing shifting goalposts. Organisations may face complaints and possibly litigation if staff consider their rights under the DPA have been breached. It is also likely to impact negatively on staff retention, as high quality, highly paid

staff seek posts in other countries where their privacy is likely to be better protected.

We also feel that the reporting requirements placed on expenses (which do not feature in the financial statements and are not classed as reward) are too stringent. Also, the information required on hospitality payments is unlikely to be held to the level of detail required.

Case law

In respect of the Higher Education sector, the revised Code does not take into account recent case law, in particular the First Tier Tribunal case of King's College London v the Information Commissioner EA/2014/0054. In that case the Tribunal considered a Freedom of Information request made to King's College London (KCL) for the specific job titles and salary bands for all staff earning above £100,000 by way of £10,000 bands. The initial decision by the ICO ordered KCL to disclose the information. However, on appeal the outcome of the case was as follows:

- Information to be released in relation to professional services staff who were on the Principal's Central Team.

- Information to be withheld in relation to academic staff (whether or not they were on the Principal's Central Team). The ICO conceded that an exemption (S43(2) FOIA) did apply to this group in that the University would be likely to be commercially prejudiced by disclosure of such information.

- Information to be withheld in relation to professional services staff who were not on the Principal's Central Team. The Tribunal considered that disclosure would breach the principles of the Data Protection Act 1998 around personal data in that it was not fair to do so and that therefore S40(2) FOIA was engaged.

The arguments put forward by KCL both in relation to commercial prejudice and personal data remain current.

In a subsequent decision notice issued by the Information Commissioner's Office in 2015, also involving KCL, the ICO upheld the decision to withhold salary information for thirty academic staff from the Philosophy department on the basis that it was personal data and the academics would have no expectation that their employer would release such information. The ICO concluded that most employees hold a strong expectation that salary information will not be disclosed. It considered, in particular, the senior staff within the department but decided that despite the public funding there was no legitimate public interest in the disclosure of individual salary information.

We consider that Chapter 8 as currently drafted is an attempt to extend the publication requirements without due consideration of case law or existing guidance, particularly taking into account specific sector difference. Unwarranted disclosure of personal data leaves employers open to complaints and litigation under the DPA. Failure to disclose information when required to do so under FOIA leaves an organisation open to action by the ICO. It is a sensitive matter for both individual staff and universities as their employers so clarity is required.

4. Does the proposed guidance on vexatious and repeated requests provide the right level of detail about the circumstances in which public authorities might want

to consider using section 14? If further guidance on this would be useful what should this cover?

Yes, we believe the guidance provides the right level of detail: it is very useful and provides clarity on vexatious and repeated requests, which is much needed.

5. Is it helpful to merge the datasets Code of Practice with the main section 45 Code so that statutory guidance under section 45 can be found in one place?

Yes, this would be an improvement.

6. If you agree the datasets Code should be merged is it helpful to split the datasets guide into a section on release of datasets and a section on guidance on re-use of datasets?

Yes, this would be helpful.

7. Are there any other areas in Part I of the Act where it would be helpful to have additional guidance in the Code? If so, what do you think the additional guidance should cover and why?

The proposed revisions to the Code are considered sufficient and, at this stage, we do not feel there is a need for additional guidance.

UNIVERSITY OF HUDDERSFIELD

Please find below the University of Huddersfield's response to the consultation on the revised FOI Code of Practice.

1. Is the guidance in chapter 1 of the Code clear and helpful for public authorities to understand the right of access to information in the FOI Act and how to manage requests on this basis?

By incorporating more meaningful guidance, the proposed revisions to the Code are helpful in providing clarity on the right of access to information and how to manage requests. The 'information held section is particularly helpful since the guidance incorporates technological advances since the previous Code and provides clarity on debated issues, such as whether back-up files and deleted emails can be considered as held information. The revised Code also provides helpful guidance on what constitutes a valid request via social media, for example, Twitter.

Are there any other areas where it would be helpful for this guidance to be more detailed or where it could be clearer?

It may be helpful to include explicit reference in Chapter 1 to the effect of NCND on the right of access (Section 1(1) a)), together with the potential impact of Section 1(3) (clarification) and Section 9(2) (Fees notices) on the right of access (Section 1(1)(b))

2. Does the guidance about publication of FOI compliance statistics provide enough detail for public authorities to start publishing their own compliance statistics? If further guidance on this would be helpful what should this cover?

The guidance is comprehensive, but it would be helpful to clarify over what time period this information should be published, for example, the last 3 years.

3. Is the guidance about the publication of information about senior pay and benefits clear and helpful? Are there any areas of this guidance where further detail would be useful?

We believe the sector would benefit from further clarity in this area. The revised Code refers to the ICO guidance as a guide to the expected minimum level of detail for publication, however there appears to be a contradiction between the Code and the ICO model definition document for the HE sector. For the purposes of published pay and expenses, senior staff are currently defined as those earning over £100k (to be published in salary bands of £10k) and on the Senior Management Team or equivalent, whereas the Code suggests a lower threshold of £90k with a definition of senior staff as 'Director level or equivalent'. We have concerns that the proposed £90k threshold may capture academic members of staff who are not part of the senior management team and are particularly concerned about the intention to publish names in addition to job titles. For this reason, it would be helpful to provide further guidance on the senior staff definition for the HE sector.

We would argue that the recommended threshold in the Code should align with both the HE sector definition document and the FRS102 threshold (in respect of the University's Financial Statements) i.e. senior staff defined as those earning over £100k and on the Senior Management Team or equivalent. We also note that there is no specific reference to the use of salary bands in the revised Code and again, believe the sector would benefit from further clarity on this aspect.

4. Does the proposed guidance on vexatious and repeated requests provide the right level of detail about the circumstances in which public authorities might want to consider using Section 14? If further guidance on this would be useful what should this cover?

The revised Code offers clear guidance and good examples are provided; we believe that such guidance would increase confidence in the HE sector in the application of Section 14 where applicable. The interaction between Section 12 (cost limit) and Section 14(1) is particularly helpful in terms of the application of Section 14(1) when the burden of redacting information or consulting with third parties is significant.

5. Is it helpful to merge the datasets Code of Practice with the main section 45 Code so that statutory guidance under section 45 can be found in one place?

Yes, however, we believe that further clarity on the definition of dataset is required, for example, is a report which manipulates raw data to provide a subset of a dataset in itself a dataset? The issue of datasets appears to have limited prominence within sector discussion forums and it is questionable as to whether the guidance has been fully understood, or implemented, within the sector.

6. If you agree the datasets Code should be merged is it helpful to split the datasets guide into a section on release of datasets and a section on guidance on the re-use of datasets?

Whilst this is not necessarily helpful to HE sector, this would make sense for other public authorities. As such we have no particular preference.

7. Are there any other areas in Part I of the Act where it would be helpful to have additional guidance in the Code? If so, what do you think the additional guidance should cover and why?

The new Code is helpful in terms of expanding on previous guidance and bringing it into one place. Clarification of the 40 working day timescale for internal review requests and the 20 working day timescale for internal review responses is helpful in Chapter 5 in terms of a consistent approach within the sector, in contrast with the previous Code which states that public authorities should set their own 'reasonable' target times.

Chapter 2 – Advice and assistance

Clause 2.9 – it would be helpful to include a recommended timescale for closure of requests in cases where clarification is requested, but not received, to ensure efficient (and consistent) management of requests by public authorities.

Chapter 4 – Time limits for responding to requests

Clause 4.2 – it would be helpful to clarify non-working days as weekends, Christmas Day, Good Friday and Bank Holidays anywhere in the UK given previous debate in the sector on this issue.

WARWICKSHIRE COUNTY COUNCIL

Please find below Warwickshire County Council's response to the consultation on revisions to the FOI Code of Practice.

1. Is the guidance in chapter 1 of the Code clear and helpful for public authorities to understand the right of access to information in the FOI Act and how to manage requests on this basis?

The guidance contained in the updated Code of Practice is generally felt to be helpful. In particular, the further clarification in relation to the meaning of 'information held' for the purposes of the Act is welcome.

Are there any other areas where it would be helpful for this guidance to be more detailed or where it could be clearer?

We consider that it would be helpful to have clarification in respect of one area.

Paragraph 1.4 of the draft Code states that a request for the requestor's own personal data is also excluded from the FOIA (as it falls within the DPA framework). This suggests that an authority is not obliged to formally refuse the request under FOIA and can move straight to dealing with it under the DPA. Current ICO guidance indicates that an authority should issue a refusal notice under the FOIA and then deal with the request under the DPA. It would be helpful for the revised Code to indicate the approach that authorities are expected to take with regard to the issue of refusal notices. Our preference would be for formal refusal notices not to be necessary if the matter is being dealt with under the DPA as correspondence containing a formal refusal notice when the authority is in fact dealing with the matter could be confusing for

the requester and also builds in time and cost for the authority in the effective handling of requests.

2. Does the guidance about publication of FOI compliance statistics provide enough detail for public authorities to start publishing their own compliance statistics? If further guidance on this would be helpful what should this cover?

The guidance about publication of FOIA compliance statistics is generally helpful.

We note that there is a published methodology for the reporting by Government of Freedom of Information Statistics and that this incorporates the Environmental Information Regulations.
(https://www.gov.uk/.qovernment/uploadssstem/uploads/attachment data/file/609515/ FOI Statistics Quality and MethodOIOC)¥ Information document.pdf).

The Code of Practice contains guidance in relation to an authority's exercise of its duties under the FOIA. As such, our understanding is that the Code requires publication of FOIA related statistics and, unlike the Government's reporting arrangements, does not extend to EIR, although hybrid requests would need to be considered and potentially reported. It would be helpful for existing ICO guidance to be reviewed and updated to ensure that there is consistency between existing guidance and the provisions of the new Code and that there is clarity for non Government authorities in terms of the requirements for publishing compliance statistics across the different information management regimes.

We would also wish to point out that local authorities use different methods for collating data on information requests which include the use of commercial information request systems to monitor and provide performance statistics. The requests answered within the timescales are usually based on requests due in a month/quarter, not the requests received. This make for easier and more timely reporting rather than waiting a further 20 days. We understand that the approach to reporting Government statistics in this area is different. It would be helpful if this difference could be recognised in terms of the reporting periods and a flexible approach applied.

The principle of reporting the number of requests granted/ withheld is understood however the definition as currently drafted only takes into account information which is either released in full or withheld in full. It does not take into account those cases where information is only partially released. As this is a category of response which is not uncommon, we suggest that consideration be given to introducing a new category for the purposes of reporting.

3. Is the guidance about the publication of information about senior pay and benefits clear and helpful? Are there any areas of this guidance where further detail would be useful?

Whilst we recognise the importance of transparency in relation to senior executives pay and benefits, we also welcome the increased salary level of £90,000 as the threshold for publishing information about senior pay and benefits under the revised Code. We think increasing the threshold for publication is the right approach to take as otherwise, an increasing number of staff who are not 'senior executives' and who do not occupy positions of significant influence within the authority would be included were the lower level of £58,200, currently cited in the model publication scheme for principal authorities, continue to apply. We trust that the ICO will be revising its model publication scheme to reflect this new uplifted figure.

4. Does the proposed guidance on vexatious and repeated requests provide the right level of detail about the circumstances in which public authorities might want to consider using section 14? If further guidance on this would be useful what should this cover?

We welcome the revised guidance on vexatious and repeated requests which we see as more flexible and a positive step for authorities in this context. However It would be helpful if the guidance went slightly further to confirm that organisations are not expected to go to significant evidential lengths to prove that requests are linked in some circumstances. For example, when many requests are received from a campaign group, even if from different requestors, we feel the authority should be given the discretion to determine the level of proof required to determine that the requests are 'linked' in the circumstances of the specific case.

5. Is it helpful to merge the datasets Code of Practice with the main section 45 Code so that statutory guidance under section 45 can be found in one place?

Yes, it would be helpful to have the statutory guidance in one place.

6. If you agree the datasets Code should be merged is it helpful to split the datasets guide into a section on release of datasets and a section on guidance on re-use of datasets?

Yes, it would be helpful to split out the datasets guidance in the way suggested.

7. Are there any other areas in Part I of the Act where it would be helpful to have additional guidance in the Code? If so, what do you think the additional guidance should cover and why?

We cannot identify any areas for additional guidance other than those referred to above.

WATER SERVICES REGULATION AUTHORITY (Ofwat)

1. Is the guidance in chapter 1 of the Code clear and helpful for public authorities to understand the right of access to information in the FOI Act and how to manage requests on this basis?

The information is very clear and is helpful in setting out how to manage requests. No other areas were identified where it would be helpful for this guidance to be more detailed or where it could be clearer.

2. Does the guidance about publication of FOI compliance statistics provide enough detail for public authorities to start publishing their own compliance statistics? If further guidance on this would be helpful what should this cover?

Nothing further required.

3. Is the guidance about the publication of information about senior pay and benefits clear and helpful? Are there any areas of this guidance where further detail would be useful?

The information may have a tendency to confuse. For example it talks about SCS level directors and then specifically sets out pay at £90k and above. An additional

line setting out where departments do not utilise SCS level grade we would expect the guide to be £90,000 and above and working on a management board.

4. Does the proposed guidance on vexatious and repeated requests provide the right level of detail about the circumstances in which public authorities might want to consider using section 14? If further guidance on this would be useful what should this cover?

The guidance is clear. However it would be useful to have some links to case law from the ICO page linked to the guidance specific

5. Is it helpful to merge the datasets Code of Practice with the main section 45 Code so that statutory guidance under section 45 can be found in one place?

It is helpful to merge the information in one place, making it easier to locate all similar information and see easily the relationship between the two sections.

6. If you agree the datasets Code should be merged is it helpful to split the datasets guide into a section on release of datasets and a section on guidance on re-use of datasets?

Agree with the proposed approach.

7. Are there any other areas in Part I of the Act where it would be helpful to have additional guidance in the Code? If so, what do you think the additional guidance should cover and why?

It would be useful to have some updated guidance on the use of S40-personal data post GDPR implementation

WELSH GOVERNMENT

1. Is the guidance in chapter 1 of the Code clear and helpful for public authorities to understand the right of access to information in the FOI Act and how to manage requests on this basis?

Are there any other areas where it would be helpful for this guidance to be more detailed or where it could be clearer?

Para 1.2 states

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.

However, 'any form' is wider than electronic or paper (e.g. audio recordings on tape) so these restricted definitions could be confusing.

Para 1.3 states:

Public authorities are not required to create new information in order to comply with a request for information under the Act.

The Welsh Government would welcome more guidance on what 'creating information' would entail and how it differs from 'a new task'.

Para 1.4 states:

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.

This is slightly contradictory; a 'general enquiry' might not ask for recorded information in the first place, a fact recognised in Para 1.7

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.

Para 1.5 will need updating to take into account the General Data Protection Regulation.

Para 1.10 states:

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.

However, Section 3(2) of the Freedom of Information Act 2000 states:

(2) For the purposes of this Act, information is held by a public authority if—
(a) it is held by the authority, otherwise than on behalf of another person, or
(b) it is held by another person on behalf of the authority.

Because of that, we believe this section needs clarification, in particular what purely personal, political etc. information would amount to and why it would not be 'held' (within the meaning of the definition under s3(2).

Para 1.12 states:

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. The public authority may consider that on the balance of probabilities the information is not held.

However, this does not take into account the 'building block' approach advocated by the ICO in their Guidance document "Determining whether information is held". We think the revised Code should take this into account.

Para 1.16 states:

Requests must be addressed directly to the public authority the applicant is seeking information from.

We believe it would be useful if the scenario where a public authority (X) has been copied into an email (that contains a request) to another public authority (Y) be clarified; is authority X still obliged to consider the request?.

Para 1.17 states:

Requests submitted in a foreign language are not generally considered valid requests.

It would be useful if 'generally' could be explained and also the criteria surrounding the 'exceptions'.

2. Does the guidance about publication of FOI compliance statistics provide enough detail for public authorities to start publishing their own compliance statistics? If further guidance on this would be helpful what should this cover?

The Welsh Government already publishes detailed FOI compliance statistics in its annual reports on the implementation of open government legislation and policies. We are content that the guidance is sufficiently detailed and clear.

3. Is the guidance about the publication of information about senior pay and benefits clear and helpful? Are there any areas of this guidance where further detail would be useful?

The Welsh Government already publishes information on senior pay and benefits. We are content that the guidance is sufficiently detailed and clear.

4. Does the proposed guidance on vexatious and repeated requests provide the right level of detail about the circumstances in which public authorities might want to consider using section 14? If further guidance on this would be useful what should this cover?

The revised Code of Practice sets out a clear and useful summation of the extant vexatious case law and guidance. As the word 'campaign' is in inverted commas, we believe it would be useful if this could be clarified and elaborated on both in this context, and also how it relates to the reference to 'campaign' in The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (in the context there of aggregating requests for the purposes of calculating the appropriate limit).

5. Is it helpful to merge the datasets Code of Practice with the main section 45 Code so that statutory guidance under section 45 can be found in one place?

We agree that this would be helpful and convenient.

6. If you agree the datasets Code should be merged is it helpful to split the datasets guide into a section on release of datasets and a section on guidance on re-use of datasets?

We agree that this would be helpful.

7. Are there any other areas in Part I of the Act where it would be helpful to have additional guidance in the Code? If so, what do you think the additional guidance should cover and why?

The Welsh Government believes the draft Code is a timely and useful update and re-statement of the obligations incumbent on public authorities under the FOI Act. We are unable to highlight any areas that we believe require additional guidance.

WELWYN HATFIELD BOROUGH COUNCIL

On behalf of Welwyn Hatfield Borough Council, I would like to offer the following comments:

Information held

1.12 – It is good to note your views on searches for information. We have recently been involved with a case that is currently with the First Tier Tribunal and one of the views of the applicant was that the Council had not searched properly for the information. Your point about "a reasonable and intelligent way" is most welcome and we have concluded that on the balance of probabilities no more information is held. The Information Commissioner have backed our stance so let's hope that the Tribunal also agree.

Fees

1.20 - The Council, I suspect like most local authorities do not normally charge for information but it is interesting your comment about charging for redacting exempt information. To be clear, we are not allowed take into account redacting as part of section 12 of the Act but we can if we intend to charge for supplying the information? Is this correct? Not that it would normally bother us as we do not usually charge but this does seem a strange view.

Advice and assistance

2.7 – Real names – We have had occasions where false names have clearly been supplied and we have gone back to the requestor stating this. They always appear to be reluctant to do this. Clearly they do not want their identity revealed. We are pleased that you have reinforced the stance on this in the guidance as this is surely all part of the open and transparent agenda.

Consultation with third parties

3.3 – We are also pleased that you have recognised that third parties holding information for or on behalf of a public authority should be taken into consideration and seriously considered.

Internal Reviews

5.3 – This authority give the requestor 10 working days to appeal and then processes that appeal within 10 working days. In a small council such as ours, we consider this to be reasonable. However, we do note your extended times and will be pleased to use them if we fail to meet our own deadlines.

Cost Limit

6.8 – Again, grateful that you have recognised that searches should be focussed.

Vexatious Requests

7.3 – This exemption has never been used at this Council, but we have been tempted on several occasions. However, it has always appeared to us that to justify a request being vexatious is so difficult that it is not worth all the effort in responding, dealing with an internal appeal and then the ICO. So good to see your comment about "being applied as a last resort or exceptional circumstances" Backing from the ICO would assist in this case!

In conclusion, having read your document and taking into account the section 45 code, I am assured that this Council are abiding by the regulations and operating within the spirt of the Act.

WIGAN COUNCIL

8. Is the guidance in chapter 1 of the Code clear and helpful for public authorities to understand the right of access to information in the FOI Act and how to manage requests on this basis? Are there any other areas where it would be helpful for this guidance to be more detailed or where it could be clearer?

There does seem to be an absence of advice on the application of exemptions and applying any Public Interest Test ie how to undertake this, records to be retained and what should be communicated to the requester at the initial response and internal review stage.

It would be helpful for the new Code of Practice to provide more guidance to authorities on the public interest test and the requirements in assessing this, documenting it and communicating the outcome when responding to both the initial response and any subsequent internal review.

9. Does the guidance about publication of FOI compliance statistics provide enough detail for public authorities to start publishing their own compliance statistics? If further guidance on this would be helpful what should this cover?

We currently gather information on FOI compliance on a quarterly basis though this is not yet published.

The revised Code calls for authorities to publish statistics including how many times requested information has been released and how many times it has been withheld. It is worth noting that in some instances an exemption is only applied to part of the request so this needs to be made clear in any published data.

10. Is the guidance about the publication of information about senior pay and benefits clear and helpful? Are there any areas of this guidance where further detail would be useful?

We more or less comply with this at the moment as senior officer salaries are published in the Statement of Accounts.

The revised Code also suggests publication of Benefits in Kind of Directors and equivalent. It would be useful for more clarification on the term 'Benefits in Kind'

11. Does the proposed guidance on vexatious and repeated requests provide the right level of detail about the circumstances in which public authorities might want to consider using section 14? If further guidance on this would be useful what should this cover?

The Code states that if an authority has previously complied with a request for information, 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'. Clarification of 'reasonable interval' would be useful.

12. Is it helpful to merge the datasets Code of Practice with the main section 45 Code so that statutory guidance under section 45 can be found in one place?

Yes.

13. If you agree the datasets Code should be merged is it helpful to split the datasets guide into a section on release of datasets and a section on guidance on re-use of datasets?

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14. Are there any other areas in Part I of the Act where it would be helpful to have additional guidance in the Code? If so, what do you think the additional guidance should cover and why?

With regards to requests made via Social Media – while the code says that these are acceptable via for instance Twitter, it doesn't make clear how we should respond. I would think it is not always appropriate or possible to respond via the same method. For instance when large attachments are included in a response.

WORLD WIDE FUND FOR NATURE: UK

Response

2. Although, perhaps inevitably, most of the information requested by WWF, pursuant to a legal right to information, tends to fall under the Environmental Information Regulations 2004, rather than the Freedom of Information Act 2000, nevertheless there is considerable read-across between the two regimes and WWF hopes that the answers to the specific questions raised by the consultation will be of assistance.

3. Question 1. Is the guidance in Chapter 1 of the Code clear and helpful for public authorities to understand the right of access to information in the FOI Act and how to manage requests on this basis? Are there any other areas where it would be helpful for this guidance to be more detailed or where it could be clearer?

4. Although paragraph 1.5 of the draft Code recognises that a request for environmental information should be made and dealt with under the Environmental Information Regulations 2004, it may be worth noting in this Code that there is a specific and separate Code dealing with the 2004 Regulations.

5. Question 2. Does the guidance about publication of FOI compliance statistics provide enough detail for public authorities to start publishing their own compliance

statistics? If further guidance on this would be helpful what should this cover?

6. Section 8 of the draft Code, on Publication Schemes, specifically paragraph 8.5, details information that should be held by public authorities and published concerning their performance in relation to requests made under Freedom of Information.

7. In relation to the initial 20 working day deadline, the second bullet point suggests that public authorities should record "*the timeliness of the response, e.g. whether the statutory deadline was met*".

8. WWF believes that public authorities should perhaps be asked to record, for each request for information, on which day of the 20 working days the response to requests was, in fact, given.

9. In WWF's experience, which we understand is shared by other UK conservation and wildlife organisations, requests for information are routinely responded to not until the 20th working day.

10. It would be instructive for both the Information Commissioner and for the public authorities concerned to be able to examine how often requests are responded to "promptly" and not merely just within the 20 working days.

11. Under both FOIA and the 2004 Regulations, the 20 working day period within which information is to be provided needs to be recognised more clearly as a 'longstop' and not a target.

12. Although this is referred to in paragraph 4.1 of the revised Code, WWF believes that paragraph 4.1 would benefit from amendment to emphasise to public authorities that "promptly" may mean that a response should be made well within a 20 working day period, and certainly for those easier requests. The 20 working day period is a limit and not a target.

13. Question 3. Is the guidance about the publication of information about senior pay and benefits clear and helpful? Are there any areas of this guidance where further detail would be useful?

14. No comment.

15. Question 4. Does the proposed guidance on vexatious and repeated requests provide the right level of detail about the circumstances in which public authorities might want to consider using section 14? If further guidance on this would be useful what should this cover?

16. While generally WWF is content with the revised Code with respect to vexatious requests, public authorities should be advised also to consider whether they are properly distinguishing between repeat requests, which may be following a legitimate investigative line, and which may not be particularly comfortable for the public authority concerned, and those requests which are truly vexatious.

17. For example, the degree to which the information being requested may be considered embarrassing to the public authority should have no bearing upon the decision-making as to whether the applicant is behaving in a vexatious manner.

18. At the December 2017 Holyrood FOI Conference, a suggestion was made that public authorities in Scotland could usefully consider asking one of their own staff to

become or adopt the role of an internal advocate for the requester, when difficult decisions, such as whether to consider a request as vexatious, are being made. Such an advocate role could go some way to 'defusing' otherwise vexatious requests and WWF would support such an approach.

19. Question 5. Is it helpful to merge the datasets Code of Practice with the main section 45 code so that the statutory guidance under section 45 can be found in one place?

20. No comment.

21. Question 6. If you agree that the datasets code should be merged is it helpful to split the datasets guide into a section on release of datasets and a section on guidance on the reuse of datasets?

22. No comment.

23. Question 7. Are there any other areas in Part 1 of the Act where it would be helpful to have additional guidance in the Code, if so what do you think the additional guidance should cover and why?

24. WWF strongly supports the duty in the 2004 Regulations requiring public authorities proactively to publish information and believes that, across both freedom of information regimes, public authorities should be strongly encouraged to publish data and information in advance of specific requests.

25. Similarly, WWF strongly supports the duty to advise and assist applicants for information. In some circumstances, the duty in section 16 of the Act is perhaps as important as the main duty to provide information upon request.

26. Public authorities could be reminded in the revised Code that applicants for information can find it very difficult to ask for information because they do not know in what form that information may be held, or indeed if it is held at all, or that it may only be partially held or held in a slightly differently to how the applicant believes it might be held. Under those circumstances, the duty to advise and assist is of paramount importance to applicants.

27. Public authorities should be encouraged in the Code to recognise that providing advice and assistance is part and parcel of the overall right to information under FOIA.

28. Similarly to the suggestion above, public authorities could perhaps consider asking one of their own staff to become or adopt the role of an internal advocate for the requester when a public authority requires clarification on a request, or is minded to ask for the request to be re-framed to reduce costs below the costs limit.

29. WWF has no objection to the publication of this response and would be happy to assist further if requested.

WYRE FOREST DISTRICT COUNCIL

We welcome the opportunity to respond to this consultation paper. We have set out below our detailed responses to the consultation questions.

Some of the changes to the guidance seek to impose additional burdens on councils and we believe therefore that the new burdens doctrine is triggered: the Cabinet Office needs to consult local government on the financial impact and provide additional resources before proceeding with implementing changes to the code. The Code does not generally apply to the private sector and, while it would apply to a range of public bodies, we believe that councils are likely to be subject to far more requests proportionately than national or regional public bodies because of their more local nature. Also frequent national media requests seek to obtain information from all councils in order to produce analysis of the national position, or to contrast the position between different councils.

Without additional funding to recognise the burdens imposed by changes to the code, councils may struggle to comply with the revised code. This comes at a time when district councils in particular are under severe financial pressure after several years of significant reductions in Government funding as a result of austerity and additional resources have had to be deployed to comply with the implementation of major changes to data protection legislation in May this year.

Question 1: Is the guidance in chapter 1 of the Code clear and helpful for public authorities to understand the right of access to information in the FOI Act and how to manage requests on this basis? Are there any other areas where it would be helpful for this guidance to be more detailed or where it could be clearer?

We believe that the revised draft guidance is generally clear and helpful in ensuring that councils and their employees understand the right of access to information under the FOI legislation and how to manage day to day requests.

In our view, the guidance in paragraph 1.21 about charging for the physical cost of making redactions conflicts with the guidance that staff time may not be charged where the cost of compliance falls below the cost limit. It is difficult to conceive of circumstances where the cost of making redactions will be anything other than staff time (costs of paper, ink, photocopying etc are already covered). We would suggest a change of approach here and in paragraph 6.4 so that the cost of making redactions (which will be wholly or almost wholly staff time) is counted towards the cost of responding to a request and therefore affects whether or not the cost limit is exceeded. For simple requests, that involve only limited work on redactions, this will not affect the ability of individuals to obtain information for free. However, many cases that require redactions can involve very extensive amounts of work to make the redactions within large documents or files.

Against the backdrop of public austerity, it no longer seems reasonable that councils are required to bear such costs. There are legitimate reasons why redactions can and should be made. We appreciate that the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 do not explicitly mention redaction in regulation 4(3). However the process of redacting sections of a document seems to us to involve “extracting information from a document containing it” in order for the information to be disclosed. We would welcome a change of approach by the Government, if necessary by amending the 2004 Regulations as well.

It would be helpful if paragraph 1.26 was changed to state that, where the request has been submitted by email or other electronic method that allows a response to be given by those means, or if the requester has provided an email address (e.g. even if the request has been made in a letter), it is reasonable to provide a response solely by electronic means even if the requester has asked for paper copies. Given the

drive for digital services and the need to keep costs down against the backdrop of austerity, it is no longer acceptable that people who have access to electronic or digital means of communication should expect to have a preference for paper responses respected.

Question 2: Does the guidance about publication of FOI compliance statistics provide enough detail for public authorities to start publishing their own compliance statistics? If further guidance on this would be helpful what should this cover?

We oppose the proposed addition of section 8 to the guidance. This is not because we believe that councils should not publish FoI compliance statistics: many district councils do so.

Our objection relates to whether the Minister has vires under section 45(2) of the 2000 Act to require public bodies to publish these statistics. The draft code explicitly states in paragraph 8.4 that it "provides more specific guidance on two areas to supplement the existing guidance by the Information Commissioner's Office" and paragraph 8.6 states that "publication schemes are likely to form the best vehicle for publishing this information". With respect, the Minister does not have powers to specify what must be in publication schemes or to issue guidance about the content of publication schemes. Those powers are vested solely in the Information Commissioner under sections 19 and 20, including the Commissioner's powers to approve publication schemes and to issue model publication schemes.

We acknowledge that the Minister in the code can give guidance about the disclosure of datasets. However there is no drafting in section 8 of the draft code that suggests that the compliance statistics are datasets. And even if they were datasets, then the proper place for guidance about them is in the guidance on datasets that is to be merged with the code (question 5).

Not all councils publish FoI compliance statistics now, and they are not required or recommended to do so by the model publication scheme or the Information Commissioner's definition document for principal local authorities (version 3.1). Thus, if the Government goes ahead with its proposal despite our misgivings about the vires as set out above, this establishes that a new burden is being created which needs to be assessed in accordance with the new burdens doctrine.

Question 3: Is the guidance about the publication of information about senior pay and benefits clear and helpful? Are there any areas of this guidance where further detail would be useful?

Our concerns about the vires of the proposed section 8 of the code are set out above and apply equally to this provision.

Our concerns are enhanced because:

1) The Information Commissioner's definition document for principal local authorities addresses senior salaries and refers to publication of salaries above £58,200. It bases this on the (now rescinded) Code of Recommended Practice on Data Transparency which was withdrawn in May 2014;

2) There is a plethora of overlapping and in some cases conflicting requirements for publication of this information, including the Transparency Code issued under the Local Government, Planning and Land Act 1980 and the Accounts and Audit Regulations 2015, not to mention pay policy statements under section 38 of the

Localism Act 2011. The proposed guidance (even if intra vires) does not make clear whether councils are to follow only the Transparency Code or this Code – the final sentence of 8.10 might be read as applying only to salary information. The Transparency Code deals only with salaries, bonuses and benefits in kind, but not expenses; whereas the latter are covered by the pay policy statement and the Information Commissioner's definition document. The confusion and complexity is analysed further in the annex to this response. For this reason alone, we would urge either that it is stated clearly that paragraphs 8.7 to 8.10 do not apply to local authorities or that any provision made is fully consistent with extant regimes and does not add new or different requirements (as any additional requirements would constitute a new burden to be assessed under the new burdens doctrine);

3) Differential regimes are proposed for councils compared to other public bodies. Notwithstanding the points made in paragraph (2) above, if there is to be guidance in this code about publishing data on senior pay then the same regime should apply to all public bodies. It is not acceptable that other public bodies commence disclosure for senior posts at £90k when councils have to disclose at a lower level.

Question 4: Does the proposed guidance on vexatious and repeated requests provide the right level of detail about the circumstances in which public authorities might want to consider using section 14? If further guidance on this would be useful what should this cover?

We are grateful for the additional guidance provided in respect of vexatious requests, which the FOI Commission quite rightly raised as a major issue for public authorities, including district councils.

Question 5: Is it helpful to merge the datasets Code of Practice with the main section 45 Code so that statutory guidance under section 45 can be found in one place?

Yes. It is sensible to merge the guidance on datasets with the main guidance issued under section 45 of the Act, since it has been issued under the same power. It is important that the guidance on datasets is "stripped back" to those that remain covered by the Freedom of Information Act.

Question 6: If you agree the datasets Code should be merged is it helpful to split the datasets guide into a section on release of datasets and a section on guidance on re-use of datasets?

Yes. We would support the idea of splitting the datasets guidance into a section on release of datasets and a section on guidance for the re-use of datasets.

Question 7: Are there any other areas in Part I of the Act where it would be helpful to have additional guidance in the Code? If so, what do you think the additional guidance should cover and why?

We would not support any additional guidance that added to demands on and costs for councils.

In paragraph 4.7, "text" should be "test".