

Freedom of Information Act (FOIA) What you need to know

FOIA is all about the right of access

The FOIA is intended to promote greater openness and accountability. It gives a right of access to information held by public authorities including:

- Central government
- Local Authorities
- NHS
- Schools
- Police

General Right of Access

The Act was passed by parliament on 30 November 2000 with full implementation from 1 January 2005.

The public has a statutory right of access to 'recorded' information held by public authorities in any form. In other words, anyone can ask public authorities for any information they hold.

Information could include details of policy, procedures, decision-making, reports, minutes of meetings or emails.

Publication Schemes

A publication scheme is a guide to the types of information an authority routinely publishes, the format in which the information is available and how much it will cost if there are any charges.

The Act places a duty on public authorities to adopt and maintain publication schemes, which must be approved by the Information Commissioner.

Your Council has published a Publication Scheme – do you know how to locate it?

Using a publication scheme

A person can contact the authority in any way, such as telephone, e-mail, fax or in writing and ask to see their publication scheme, it should also be available online. They can then make a request for any of the information included within the scheme.

However, if the information is not included in the publication scheme, a person can make a separate request via the General Right of Access after January 2005.

Requests for Information under the General Right of Access

Requests for information must be made in **writing**, which includes emails. The request must state the name and return postal or e-mail address of the person applying for the information and the required information. The applicant need not inform the public authority that they are applying under the FOIA and authorities cannot ask why information is requested.

Example requests

- Can you provide me with the names of companies who are under contract with the Council, primarily construction and building companies?
- I would like all information, held on any media (including emails) relating to the decision to extend the A road, move the graves and demolish the church.

Timescale

Public authorities have 20 working days in which to fulfil a request.

Duty to provide assistance

Public authorities are required to provide advice and assistance to people who have made or are thinking of making a request. They should help applicants understand their rights under the Act and identify the information they want.

Charges

Public authorities are allowed to charge a fee for responding up to a maximum limit. The applicant must be informed in writing and the 20 working days period for response is put on hold until the fee is paid. If the fee is not paid within three months it is assumed the applicant no longer wants the information.

More details on the charging structure will be released soon.

Exemptions

If any of the information requested is exempt the applicant should be told which exemption applies and why.

There are 23 exemptions from the general rights of access. Examples include information that is commercially sensitive, confidential, subject to other legislation, relating to national security or readily available (e.g. in the publication scheme or website).

Some exemptions require the public authority to consider whether withholding the information is in the public interest (or prejudicial to the conduct of the public authority).

Requests covered by other legislation include Environmental Information, which can be accessed through Environmental Information Regulations and personal data, which is covered by the Data Protection Act (DPA).

If you are unsure whether information is covered by an exemption and how you should deal with requests you should speak to your FoI Contact.

The difference between FOIA and DPA

If the information is personal and about the individual making the request then the Data Protection Act 1998 will apply and the request should be treated as a Subject Access Request.

Other requests for personal information will be made under the FOIA taking account of the DPA.

Complaints

If the applicant is not happy with the response they receive they must first complain to the public authority. If they are still unhappy they may complain to the Information Commissioner who will decide whether the request has been handled properly.

Enforcement

Although the Information Commissioner is primarily responsible for overseeing the Act, there are a small number of occasions when the courts may become involved.

It is a criminal offence for anyone to destroy or erase information after a request has been received and the offence carries a fine of up to £5,000.

Codes of Practice

Under two Codes of Practice issued under the Act, the public authority is required to:

- monitor and track each request
- have a retention policy

and you should make sure that you are aware of internal guidance in these areas.

KEY POINTS

- Any written request for information may be an FOIA request
- All requests must be handled within 20 working days
- Material requested might already be in a publication scheme
- If unsure you should speak to your FoI Contact

