

1766
**Sweden

1966
United States

laws passed by countries
Up to year 2000

1982
Australia
New Zealand

1985
Colombia

1990
Italy

1994
Belgium
Belize

1997
Ireland
Thailand
Uzbekistan

1998
Israel
Latvia

Freedom of Information and academic research: a guide

Diversity, HEIs,

1978
France

1983
Canada

1987
Austria
Denmark

1991
Netherlands

1996
Iceland
Lithuania
South Korea

1999
Albania
Czech Republic
**Finland
Georgia
Greece
Japan
Liechtenstein
Trinidad

2000

Bosnia & Herzegovina
Bulgaria
Estonia
Moldova
Slovakia
• South Africa
United Kingdom

What are Freedom of Information requests?

Freedom of Information requests are critical to transparency and accountability within democracies. More specifically FoIs are an important way of providing access to the kind of institutional- and individual-level data (otherwise protected under data protection regulations) that can facilitate analyses of how particular factors impact the fairness, inclusiveness, and diverseness with which an organisation or government works. They may seem commonplace, however FoIs are fairly recent to Western democracies - particularly the UK, who did not even fully implement their FoI laws until January 2005 (Lee, 2005).

Who is this guide for and how does it relate to EDI research in Higher Education Institutions?

This guide provides general information to researchers seeking to submit a FoI request to any UK public sector body. It also gives specific and tailored guidance to Education, Diversity, and Inclusion (EDI) researchers seeking to extend their analyses into understanding disparities in economic capital among (underrepresented) postgraduate and postdoctoral researchers in the UK

The work of diversity and inclusion within higher education institutions is and should not be limited to increasing numbers of underrepresented undergraduates. We know that once accepted, many students from marginalised communities feel unsupported, overlooked, and less able to engage with a curriculum and system of knowledge production rooted in colonial violence, and lecturers with narrow perspectives on and experiences of navigating academic spaces. It must include a more complete assessment of the kinds of knowledge being produced in HEIs, how the knowledge is disseminated, who produces this knowledge, and how this knowledge is funded.

Such assessment might include determining who and what is being funded through the UKRI, the public body that hosts the UK's seven research councils. This requires much greater access to data than that which is made publicly available.

*source: Lee (2005)

*source: Freedominfo.org
**Sweden's full FoI laws enacted in 1949
***Finland passed a basic access law in 1951



Why are FoI requests to the UKRI necessary?

The UKRI's report Diversity results for UKRI funding data 2014-15 to 2019-20 warns:

“We cannot use these data to draw conclusions on the relationship between personal characteristics and application and award rates, without controlling for the effects of other background factors, both on an individual and an organisational level. These include career stage, interactions within research office, discipline and the type of organisation of the applicant.”

Those aiming to undertake further research might find it useful, if not necessary, to make a Freedom of Information request to the UKRI for disaggregated, organisational- or individual-level data to be able to draw such conclusions.

Why are FoI requests particularly challenging for EDI researchers?

To get a clear sense of the barriers that marginalised groups face within their academic institutions and how they are exacerbated or mitigated by intersections of identities and background factors, significant quantities of personal and special category data might be required. There are many exemptions under which such requests for high-volume and sensitive data may be refused.

In addition, EDI work in many institutions remains cursory, short-term, under-resourced, and/or underfunded. Meanwhile FoI requests can take some time to navigate and resolve. It is essential to ensure your initial request is thorough, correct, and resolvable in order to hit the ground running. Structuring an appropriate, informed FoI request can reduce the chances that the data you seek will be withheld or that you will be asked for further clarification. Organisations have 20 days to respond to FoI requests by law; two rounds of clarifications could result in a two-month gap between request and outcome, making data analysis untenable if the in a 3-month project (for example).

How does UKRI collect data?

UKRI does not directly fund individual students, instead training grants are awarded to Research Organisations: primarily universities who make awards through their Doctoral Training Partnerships (DTP) and Centres for Doctoral Training (CDT). This means that both the recruitment of students, and collection of their individual data, is devolved to DTPs and CDTs. It is they who are responsible for updating UKRI's system with details of those who have been allocated funding.

UKRI then collects aggregated diversity data on applicants from the Research Organisations. This data comes from recent reporting requirement that has been rolled out across individual Research Councils over the past 3-4 years.

What data does UKRI not hold?

UKRI holds only very limited and aggregated data for unsuccessful applicants.

For successful applicants, UKRI does not collect the following data:

1. location data of the individual (at any level of granularity) – any geographical analyses would have to use the location of the institution as a proxy.
2. Whether applications for funding were made prior to or during PhD candidacy

Who are we?

This guide was produced by Dr Lydia Gibson at the Academic Violence Collective during her time at the EDI research cluster at UCL, Institute of Advanced Studies. If you have any queries about the contents of this guide or request permission for its use, please contact Academic Violence at lydia.gibson.14@ucl.ac.uk or visit

www.academicviolence.com



What is refusal under Section 40(2)?

Requesting (anonymised) individual-level data that involve personal characteristics requires extreme care as there are articles under which requests can be refused and compliance is exempt. UKRI may refuse such requests under Section 40(2) of the Freedom of Information Act.

Section 40(2) specifies the type of requests for personal data that fall under the Freedom of Information act; there is, therefore, an obligation on the part of the data holder to comply with such requests. It states:

‘Any information to which a request for information relates is also exempt information if—

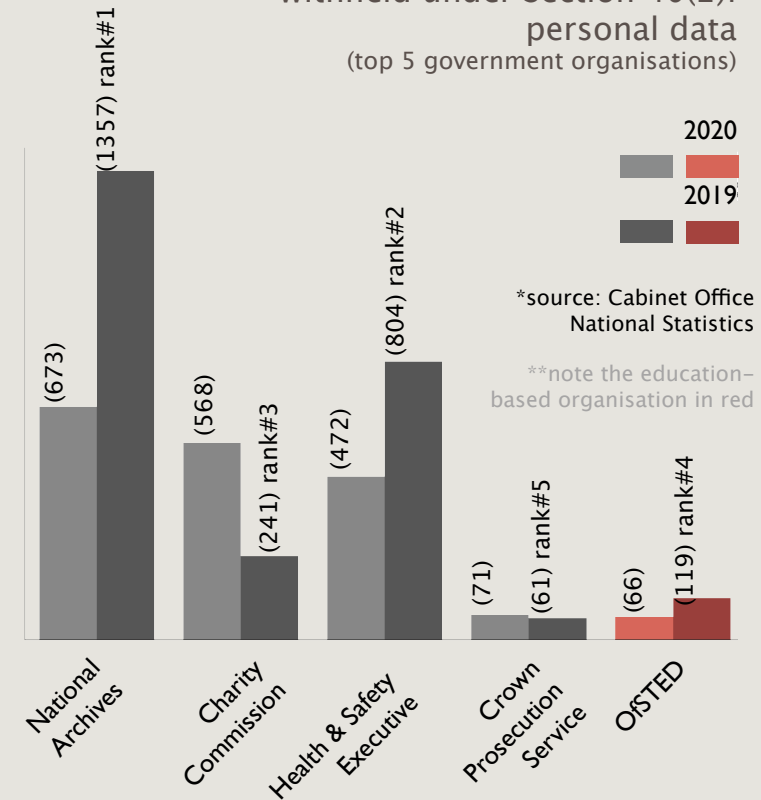
‘(a)it constitutes personal data which does not fall within subsection (1)’

Subsection (1) states that requests for the applicant’s own personal information automatically falls under the scope of the Freedom of Information Act (and must therefore be complied with).

‘(b)the first, second or third condition below is satisfied’

This refers to the conditions listed under Sections 40(3a), 40(3b), and 40(4a) respectively. If any are satisfied then the request does not fall under the FoI Act, and the data holder is **exempt from compliance**

Number of FoI requests withheld under Section 40(2): personal data (top 5 government organisations)



LAW

CONDITION 1

(Section 40[3a]): the disclosure of the information to a member of the public otherwise than under this Act— (a)would contravene any of the data protection principles, or (b)would do so if the exemptions in Article 24(1) of the Data Protection Act 2018 were disregarded.



ADVICE

Article 24(1) of the Data Protection Act includes the exemption listed under Article 10(1e): ‘prohibition on processing of special categories of personal data’ is exempt in the case of ‘archiving, research and statistics’.

TIP: outline your research as part of your request to show condition 1 is not satisfied

CONDITION 2

Section 40[3b]): the disclosure of the information to a member of the public otherwise than under this Act would contravene Article 21 of the GDPR (general processing: right to object to processing).

Article 21(6) states ‘where personal data are processed for scientific or historical research purposes or statistical purposes’, the data subject does not reserve the right to object if ‘the processing is necessary for the performance of a task carried out for reasons of public interest’

TIP: explain in your request why the data required is both necessary and in the public interest

CONDITION 3

(Section 40[4a]): on a request for access to personal data, the information would be withheld in reliance on provision made by or under section 15, 16 or 26 of, or Schedule 2, 3 or 4 to, the Data Protection Act 2018 (plus another provision, relevant only to law enforcement processing)

These articles gives the circumstances in which data is to be withheld: e.g. data connected to safeguarding, national security, defence; to protect freedom of expression; specific restrictions around ‘health, social work, education and child abuse data’.

TIP: requesting data on disability is particularly sensitive. As well as being a special category, it may be withheld under condition 3.

What is refusal under Section 12?

The limited, aggregated nature of the diversity data held by UKRI has further implications under the Freedom of Information Act. Requesting individual-level data requires a significant amount of sifting and disaggregation, which can take time and therefore cost money. Article 12 outlines exemptions (under which data holders no longer have to comply) where cost of compliance exceeds appropriate limit.

Article 12(1):

Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.

Article 12(3) only describes an “appropriate limit” as ‘such amount as may be prescribed, and different amounts may be prescribed in relation to different cases’. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004, however, defines “appropriate limit” in Article 3(2) as:

In the case of a public authority which is listed in Part I of Schedule 1 to the 2000 Act, the appropriate limit is **£600**.

and in Article 3(3) as:

In the case of any other public authority, the appropriate limit is **£450**.

What FoI requests fall within the appropriate cost limits?

The Independent Commission’s Office, the independent authority that regulates information rights and requests, breaks down the cost to organisations:

‘The biggest cost is likely to be staff time. You should rate staff time at £25 per person per hour, regardless of who does the work, including external contractors. This means a limit of 18 or 24 staff hours, depending on whether the £450 or £600 limit applies to your public authority.

You cannot take into account the time you are likely to need to decide whether exemptions apply, to redact (edit out) exempt information, or to carry out the public interest test.’

EFFECTIVE FOI REQUESTS



The UKRI falls under the public authorities whose appropriate limit is £450. The 18 staff hours is exceeded by requests for individual-level data on gender, age, research organisation, and funding type between the years of 2014-15 and 2019-20 (the years covered by the UKRI’s diversity data report, for example). Ethnicity and disability have been removed from this list as it is extremely difficult to acquire and is likely to be withheld by UKRI under Section 40(2).

This cannot always be circumvented by simply splitting your request into batches. Article 12(4) stipulates that

‘where two or more requests for information are made to a public authority— (a) by one person, or (b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign, the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.’

TIP: Whilst monitoring trends over time and conducting intersectional analyses are important in EDI work, there may only be scope for smaller, more restricted analyses, so **choose your focus**.

Departments of States and government bodies that collect and store (disaggregated) data from source, such as Department for Education and Office of National Statistics, have the highest percentages of FoI requests granted in full. You may choose, as an alternative, to request data directly from the organisations who conduct primary data collection (in the case of the UKRI, this means requesting data from each of the seven research councils)

