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FREEDOM OF INFORMATION

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Background

- The Freedom of Information Act 2000 (the "Act") gives any person access to information held by public authorities in England, Wales and Northern Ireland subject to certain exceptions.
- Similar legislation exists in Scotland however this is not covered in this guide.
- No reason need be given for wanting such information.

Other legislation

Other legislation not covered in this guide which allows rights of access to information includes the Data Protection Act 1998, the Local Government (Access to Information Act) 1985 and the Environmental Information Regulations 1992.

Right of access to information held by public authorities

A person making a request for information to a public authority is entitled:

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request (this is known as "the duty to confirm or deny"); and
- (b) if that is the case, to have that information communicated to them.

Obligation to publish certain information

A public authority must also:

- (a) adopt and maintain a scheme which relates to the publication of information and is approved by the Information Commissioners Office (the "ICO");
- (b) publish information in accordance with its publication scheme; and
- (c) from time to time review its publication scheme.

Publication scheme

The publication scheme is a short document setting out:

- (a) the public authority's commitment to proactively publish information; and
- (b) the classes of information that should be published.

The publication scheme is usually available on the public authority's website.

Public Authorities

- Public authorities include government departments, local authorities, the NHS, schools and other educational institutions, the police and certain other public bodies as specified in the Act.
- In addition, the Act allows the Secretary of State the power to designate further bodies as public authorities.
- Certain bodies (e.g. the House of Commons) are only covered for some of the information they hold.

Information

Information means information recorded in any form, subject to certain exceptions.

Persons

Persons are not restricted for under the Act and, therefore, include non-natural persons (including companies) and persons or bodies not connected with England, Wales or Northern Ireland.

Exemptions

The duty to confirm or deny (see "Right of access to information held by public authorities" above) does not apply where:

- (a) there is an absolute exemption; or
- (b) in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the public authority holds the information.

Absolute exemptions include:

- information available by other means;
- information supplied by, or relating to bodies dealing with security matters;
- personal information subject to the Data Protection Act 1998; and
- trades secrets and information where its disclosure under the Act would, or would be likely to, prejudice the commercial interests of any person.

Codes of Practice

Two Codes of Practice contain recommended good practice when applying the Act (see "Links" below).

How to make a request for information under the Act

A request must:

- be in writing (letter or email);

- include the name and address of the requester; and
- describe the information requested.

A question can be a valid request and if the public authority has information that answers the question they should provide it in response.

Time frame for a public authority to respond to a request

- A public authority must respond promptly and within 20 working days (starting with the first working day after the request is received).
- For schools, the time limit is 20 school days or 60 working days (if shorter).
- The information can be made available through any reasonable means (e.g. if the request was made by email, then it would be reasonable to receive an email response).

Can a public authority charge for the information?

A public authority can charge a fee for complying with its duties under the Act. If a fee is payable, the public authority must send the requester a fees notice and the fee must be paid within three months of receipt of the notice.

The Act does not allow the public authority to charge a flat fee but it can recover its communication costs (e.g. photocopying), printing and postage.

When can a public authority refuse a request?

A public authority can refuse a request if it will cause a drain on their time, energy and finances to the extent that it will negatively affect their normal public functions.

The cost limit for complying with a request is £600 for central government, Parliament and the armed forces and £450 for all other public authorities.

A request can also be refused if it threatens to undermine the credibility of the freedom of information systems and divert resources away from more deserving requests. A public authority will consider the following in reaching such decision:

- how much work is required to comply with the request;
- the requester's tone and manner;
- whether the request appears obsessive; and
- whether there is any value in the request.

If a request is refused, the public authority should send a refusal notice promptly and within 20 working days of receiving the request. This must outline why the request was refused and the rights of the requester to complain to the ICO (see "How to make a complaint if a request is refused" below)

How to make a complaint if a request is refused

If a request is refused, the requester can complain to the ICO. The ICO will often resolve complaints informally. However, the ICO does have the power to issue legally

binding decision notices requiring the public authority to take steps to put things right (e.g. by disclosing some or all of the requested information).

If the ICO does not overturn the decision of the public authority, the requester can appeal to the First Tier Tribunal within 28 days following the ICO publishing its decision. There is no fee for appealing to the Tribunal.

Links

<http://www.legislation.gov.uk/ukpga/2000/36/contents>

<http://www.justice.gov.uk/downloads/information-access-rights/foi/foi-section45-code-of-practice.pdf>

<http://www.justice.gov.uk/downloads/information-access-rights/foi/foi-section-46-code-of-practice.pdf>

http://www.ico.gov.uk/for_organisations/freedom_of_information/~/_media/documents/library/Freedom_of_Information/Detailed_specialist_guides/guide_to_freedom_of_information.ashx