

**Equality and
Human Rights
Commission**

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Freedom of Information Act 2000 Policy

1. Policy Aim

This policy aims to set out the obligations of the Commission to comply with the Freedom of Information Act (FOIA) 2000.

This policy should be read in conjunction with the FOIA procedure for handling FOIA requests set out appendix 1 below.

2. Statutory Background

The Freedom of Information Act 2000, referred to below as the Act or as FOIA, gives people the right to request, in writing, information from public authorities. It is intended to promote a culture of openness and accountability amongst public sector bodies, and therefore facilitate better public understanding of how public authorities carry out their duties, why they make the decisions they do, and how they spend public money.

In addition to the Act the following other legislation concerning access to information may also require consideration when dealing with matters concerning access to information:

- i) Data Protection Act 1998 – enables individual's access to information about themselves.

ii) Environmental Information Regulations 2004 (EIRs) – enables people access to environmental information. They apply to information held by and or on behalf of public authorities and those bodies carrying out a public function.

3. Information subject to the Act

Within the context of the Act, the term ‘information’ means every piece of information held by the Commission, whether paper or electronic. It includes all draft documents, agendas, minutes, emails, diaries and even rough handwritten notes.

All information created by the Commission (or by an employee in the course of carrying out his or her duties) is subject to the requirements of the Act provided that the Commission either:

- i) retains possession of that information; or
- ii) the information has been provided to another public authority; or
- iii) the information is held on behalf of the Commission by a third party.

The Act also covers permanently transferred information from the Equal Opportunities Commission, Disability Rights Commission and Commission for Racial Equality which now rests with the Commission.

4. Right of access to information

The Act gives individuals and organisations the legal right to (1) ask if a public authority is holding information and if so (2) obtain access to information held, **within 20 working days from the day after receipt of a written request** giving the applicant's name and address. The corresponding duty on the Commission is to confirm or deny whether it holds the information and if it does to provide the information in the format requested. If information has been requested but is not held, it will normally be reasonable to inform the applicant of this fact. However, there may be some exceptional cases where it would not even be right to confirm or deny the information requested.

There is no need for the applicant to explain the reasons for their request, or that it is a request under the Act. Requests for information must be made in writing which includes emails. The request must state the name and address of the person applying for the information and the required information.

In addition, the Commission is required to proactively publish information by developing and maintaining a Publication Scheme.

5. Publication Scheme

Publication schemes are a requirement under the Act. It is the statutory duty of all public authorities, to adopt and maintain a publication scheme that has been approved by the Information Commissioner.

A publication scheme is both a public commitment to make certain information available, and a guide to how that information can be obtained. The scheme also details how much it will cost if there are any charges.

The Commission's publication scheme is currently being prepared by the Information Directorate, in line with the new model Publication Scheme which all public authorities are required to adopt with effect from **1 January 2009**. The aim of the new Scheme is to encourage maximum disclosure but at the same time reduce the burden on public authorities. Once completed, you will be able to view it on our website www.equalityhumanrights.com and on our intranet.

6. Exemptions

Overview of exempt information

While the Act governs all information created by the Commission, requesters are not entitled to be given all such information. "Exemptions" are set out in Part II of the Act. There are 23 exemptions from the right of access to information.

In broad terms, there are two kinds of exemptions:

i) Absolute exemptions – where the right to information is completely over-ridden by the exemption.

ii) Qualified exemptions - where the Commission identifies a possible exemption, but must weigh up competing interests to decide whether it serves the interests of the public better to withhold or disclose the information. This is known as the **public interest test**.

Examples of **qualified exemptions** are:

- a) Information intended for future publication
- b) national security
- c) defence
- d) international relations
- e) relations within the UK
- f) the economy
- g) investigations and proceedings
- h) audit functions
- i) formulation of government policy
- j) prejudice to effective conduct of public affairs
- h) communications with Her Majesty
- i) law enforcement
- j) health and safety
- k) some personal information
- l) commercial interests
- m) legal professional privilege.

Examples of **absolute exemptions** are:

- a) Information reasonably accessible to an applicant by other means.
- b) Information supplied by or relating to bodies dealing with security matters
- c) Court records
- d) Parliamentary privilege
- e) Personal information
- f) Information provided in confidence
- g) Information whose disclosure is prohibited by law.

Although there might be occasions when it is appropriate to rely on an exemption, provision of information is an integral part of our business. Therefore, we should aim to disclose as much information as possible and only rely on exemptions in limited circumstances.

7. Duty on the Commission

The Commission is required to tell the requester whether the information is held and if so provide it promptly, in the format required by the requester if reasonably practical, but **no later than 20 working days after the day of receipt**. In some cases a request may be refused. A refusal notice must be issued setting out the exemptions relied on and the reasons why. If the exemption is a qualified one then the public interest test reasoning must also be explained.

The notification must also explain how the requester can complain if they are not satisfied with the response received from the Commission, and their right to ask the Information Commissioner to decide whether the applicant's request has been properly dealt with.

8. Handling of Freedom of Information Act (FOIA) Request

In compliance with its statutory duty under the Act, the Commission will inform the applicant in writing whether it holds the information requested and if so, communicate that information to the applicant, promptly, but **not later than 20 working days after receipt of the request**. If it is not possible to comply with the 20 day limit the requester will be informed and given an indication of when the information is likely to be provided. Requests for information will be **acknowledged within 5 working days of receipt**.

Requests for information in relation to England will be co-ordinated by the Knowledge Officers based in the Commission's Birmingham office. Requests relating to Wales matters will be dealt with by our Wales office. Requests relating to Scotland will be dealt with by our Scotland office. A procedure for handling requests is outlined below in Appendix 1 below.

9. Fee Charging

Sections 9 and 13 of the Act allows public authorities to charge for answering requests in certain cases.

The Act provides for public authorities to either charge for or decline requests for information that would cost a public authority either more than £600 for central government, or £450 for other public authorities to deal with the request.

This is referred to as the appropriate limit (AL). Public authorities are required to estimate whether a request is likely to breach the AL. Where appropriate the Commission may charge a fee for complying with a request for information. Any fee will be calculated in accordance with the FOIA regulations and the requester will be **notified of the charge within 20 working days of the request**. The Commission is not required to comply with the request until the fee has been received. The Commission hopes to respond to straightforward requests for information free of charge and charge only where the costs are significant.

10. Complaints

If the requester is not happy with the response they receive following their request they must **first** complain to the Commission in writing (appropriate assistance will be provided to requesters with access requirements (which may include non disability related needs)).

The Complaint should be addressed to the Knowledge Officer or relevant officers in Wales and Scotland. Complaints will be acknowledged **within 5 working days** of receipt and a response provided within **20 working days following the day after receipt**.

Requesters who remain dissatisfied may complain to the Information Commissioner who will decide whether the request has been handled properly by the commission in accordance with the statutory duties set out in Section 1 of the Act.

11. Complaints to Information Commissioner

Any requester who is dissatisfied about the handling of his or her request by the Commission can make a complaint, to the Information Commissioner on any of the following grounds:-

- i. Failure to provide the information you requested
- ii. Failure to respond to your request within 20 working days (or failure to explain why longer than 20 working days is needed)
- iii. Failure to give you proper advice and help
- iv. Failure to give information in the form in which you requested it
- v. Failure to properly explain any reasons for refusing the request
- vi. Failure to correctly apply an exemption under the Act

The Information Commissioner will not normally deal with a complaint unless the Commission's internal complaints process has been exhausted. Thus if the requester remains unhappy following our response to his or her complaint they can complain to the Information Commissioner.

The Information Commissioner will give a notice of his or her decision (called a 'decision notice' DN) to the applicant and to the Commission. If the decision goes "against" the Commission the Information Commissioner will set out in the DN what the Commission must do to correct the failure and by when.

The Information Commissioner does not have to make a decision in the following circumstances (and it will tell the applicant if this is the case):

- a) When the applicant has not exhausted the Commission's own complaints procedure;
- b) Where there has been undue delay in making the application to the Information Commissioner;
- c) Where the application is frivolous or abusive; or
- d) Where the application has been withdrawn or abandoned.

12. Information Tribunal

The requester or the Commission can appeal against the Information Commissioner's decision notice to the independent Information Tribunal. Information about the right of appeal will be included in the decision notice itself.

13. Staff Responsibilities

The main responsibility of Commission staff is to forward all initial requests made to the Knowledge Officers Corporate Management, deal promptly with requests to provide responses to requests and reviews. If requests are made verbally staff must ask the requester to put their request in writing (appropriate assistance will be provided to requesters with access requirements (which may include non disability related needs) to the Knowledge Officers, or to the Welsh or Scottish Offices at the addresses given below.

14. Management Responsibilities

The Senior Management Team have overall responsibility for the FOIA policy. Directors and Group Directors are responsible for ensuring implementation and compliance with the policy and procedures for handling requests and complaints.

15. Recording and Reporting of FOIA Requests

All internal recording of requests will be held and updated by the Knowledge Officers. For further details refer to the FOIA procedure.

Reports will be provided to Senior Management Team every 6 months by the Chief Operation Officer on the number and nature of the requests and whether time scale targets have been met.

16. Breaches of the Acts

In the event of a complaint from an individual that their request for information has not been dealt with satisfactorily, Section 51 of the Act enables the Information Commissioner to serve an information notice. This would require the Commission to provide information relating to the application. If the Commission failed to comply with this, the Commissioner can certify this in writing to the High Court.

Section 54 of the Act deals with the consequences for a non-compliant authority. The non-compliance can be dealt with by the court as if the public authority had committed a contempt of court, punishment for which is fines, or the maximum penalty of 2 years imprisonment for the person accountable in the organisation.

The one criminal offence within the Act is under Section 77. If any person alters, defaces, blocks, erases, destroys or conceals any record held by a public authority with the intention of preventing the disclosure of information to an applicant who has made an individual request, he or she is guilty of an offence. If found guilty, the person will be liable on summary conviction to a fine or even imprisonment.

17. Related legislation, policies, procedures and guidelines

FOIA procedure

Data Protection Act 1998

Environmental Information Regulations 2004

18. Contact Details

Knowledge Officers Birmingham for requests relating to England

Postal address:

3rd Floor

Lancaster House

67 Newhall Street

Birmingham

B3 1NA

Email: foi@equalityhumanrights.com

Telephone via the helplines for England:-

Main Number: 0845 604 6610

Fax: 0845 604 6630

Textphone: 0845 604 6620

Wales Office

Postal address:-

Strategy and Business Planning Team

3rd Floor

Callaghan Square

Cardiff

CF10 5BT

Email: foi@equalityhumanrights.com

Telephone via the helpline for Wales:-

Main Number- 0845 604 8810

Fax: 0845 604 8830

Textphone: 0845 6048820

Scotland Office

Postal Address:-

Head of Strategic Litigation

The Optima Building

58 Robertson Street

Glasgow

G2 8DU

Email: foi@equalityhumanrights.com

Telephone via the helpline for Scotland:-

Main Number: 0845 604 5510

Fax: 0845 604 5530

Textphone: 0845 604 5520

Information Commissioner's Office

Information Commissioner's Office (ICO) for a decision
at:-Wycliffe House

Water Lane

Wilmslow

Cheshire

SK9 5AF.

Website address: www.ico.gov.uk

ICO Helpline Numbers: 0845 630 6060 or 01625545745

ICO fax Helpline Number: 01625 524510

There are regional ICO offices and the contact details
for those offices can be found on the ICO website.

Format and Language

'This policy is also available in Welsh. If you would like a copy in another language or format (such as braille, audio CD, large print or Easy Read) please contact one of our helplines. We also offer the Language Line translation service for callers to our helpline. The Commission will take reasonable steps to accommodate the access requirements brought to the attention of the Commission by inquirers or requesters of information'

Appendix 1

Procedure for handling Requests

Stage 1	Responsibility
1. Requests must be made in writing which includes emails (appropriate assistance will be provided to requesters with access requirements (which may include non disability related needs)). The request must state the name and address of the person applying for the information and the information that is required. Telephone requests should be recorded in writing by the recipient and confirmed by the requester.	Requester Commission staff
2. If staff receive FOIA requests they must forward this immediately to Knowledge Officers.	Staff that receive request
3. An acknowledgement letter/e-mail will be sent to the requester within 5 working days of receipt of the request to say that the request will be responded to within 20 working days from date after receipt of the request. If for any reason during the handling of the request it is not possible to comply with the 20 days time limit the requester will be informed and a revised date given for compliance.	Knowledge Officers Or relevant officers in respect of Wales and Scotland

<p>4. The request will be sent to appropriate officer in the relevant team to consider and prepare a draft response and returned this to the Knowledge Officers</p>	<p>Knowledge Officers Or relevant officers in respect of Wales and Scotland.</p>
<p>5. The responsible staff member i.e. the appropriate officer must return the response to the Knowledge Officers.</p>	<p>Appropriate officer</p>
<p>6. The response will be reviewed and clarified with the writer and or the Corporate Law team as necessary</p>	<p>Knowledge Officers Or relevant officers in respect of Wales and Scotland Corporate Law</p>
<p>7. The response will then be returned to the requester within the 20 working day statutory period for compliance or within the agreed revised date.</p>	<p>Knowledge Officers Or relevant officers in respect of Wales or Scotland</p>

Stage 2 Review¹	Responsibility
<p>1. Requests for reviews must be made in writing which includes emails (appropriate assistance will be provided to requesters with access requirements (which may include non disability related needs)). The request for review must state the name and address of the person applying for the review and the reason that the review is requested. Telephone requests for review should be recorded in writing by the recipient and confirmed by the requester</p>	<p>Requester</p> <p>Commission staff</p>
<p>2. If staff receive review requests they must forward this immediately to Knowledge Officers. The time frame for response begins from the date that the review request is received by the Commission.</p>	<p>Staff that receive review request</p>

¹ Requests for review where the requester is not satisfied with the initial response will be sent to the relevant Group Director to deal with.

3. An acknowledgement letter/e-mail will be sent to the review requester within 5 working days of receipt to say that the request for review will be responded to within 20 working days. .	Knowledge Officers Or relevant officers in respect of Wales and Scotland
4. The review request will then be sent out to the appropriate officer to undertake the review	Appropriate officer
5. Outcome of review to be notified to requester within 20 working days or agreed revised date	Knowledge Officers Or relevant officers in respect of Wales and Scotland

Stage 3 External	Responsibility
Any requester who is unhappy about the handling of his/her request by the Commission can make a complaint, to the Information Commissioner	Requester