



Information Commissioner's Office
Promoting public access to official information
and protecting your personal information

Freedom of Information Act Awareness Guidance No 7

Information Intended for Future Publication

The Information Commissioner's Office (ICO) has produced this guidance as part of a series of good practice guidance designed to aid understanding and application of the Freedom of Information Act 2000. The aim is to introduce some of the key concepts in the Act and to suggest the approaches that may be taken in response to information requests.

The guidance will be developed over time in the light of practical experience.

Here we consider the exemption from the duty to provide information on request when that information is intended for future publication. The exemption is set out in section 22 of the Act.

A) WHAT DOES THE ACT SAY?

The Act provides an exemption from the **right to know** if the information requested by an applicant is intended for future publication. To be covered by the exemption, the information must be held with the intention of publication at the time the request was made. It will not be permissible to argue an intention to publish the information when that decision was only made after the request was made. It is not, however, necessary to have set a publication date. Publication will often be publication in accordance with the publication scheme of the public authority.

The exemption also covers information held by the authority which another person (whether an individual, a company or another public authority) intends to publish. This is a situation which may arise reasonably frequently. For instance one public authority may have been given a draft of a document which another intends to publish.

The exemption is not, however a blanket one. A public authority may only rely upon it "if it is reasonable in all the circumstances to do so". The exemption is also subject to the public interest test (see [Awareness Guidance No 3](#)).

B) INFORMATION WHICH MAY BE COVERED

Potentially there is a large range of information which may be covered by the exemption. It may be helpful to distinguish between information which has been prepared for publication, (for instance press releases, the text of official announcements and speeches, annual reports and publicity materials) and information which exists in draft form. There may also be issues to consider in relation to some types of research. The information which it is intended to publish will frequently fall within a class of information defined in the authority's publication scheme, although there is no necessary link between the exemption and a scheme.

The two key questions to ask in all cases are:

- **Is there in fact an intention to publish the information requested?** (Where information has already been prepared for release - see below - there will be no question as to whether there is an intention to publish. However, where the information exists only in draft form or where it forms part of a larger body of information, then it may be more difficult to rely upon the exemption.)

and,

- **Is the information which is intended for publication in fact the information which the applicant has requested?** (For instance, if an applicant asks for the reasons why a planning authority turned down an application, it may not be sufficient to inform the applicant that a policy document setting out the basis of planning decisions is due to be published when, in fact, the applicant wants to know how a particular application was decided.)

a) Information prepared for release

If information has been prepared for release, a publication date will have generally have been set. Given that there is an intention to release information, the question of whether to claim the exemption will be a question about the timing of disclosure, not about the harm that might result from the release of the information in itself.

b) Drafts

The exemption may also cover some information which has not yet been prepared for publication. Although it does not apply to drafts in general, it may cover drafts of documents intended for publication. These may be the subject of an internal consultation exercise or an exercise involving a limited number of third parties.

The key issue is the likelihood of publication. For the exemption to be claimed there must be a firm intention to publish the information at the time the request is received. The fact that the information contained in a draft may be subject to amendment or may be omitted from the final published version of the information does not mean that it would be wrong to claim the exemption.

When thinking about drafts, it may also be necessary to distinguish between the information which the authority proposes to publish and associated background information, for instance discussion papers, which may have been prepared in order to assist in decisions as to publication but are not, themselves intended for publication.

At the same time, it may also be helpful to remember that the Act is concerned with information rather than documents. The fact that the words of the final document may differ from those of earlier drafts does not necessarily mean that the information is not the same.

c) Research

The exemption is not designed to protect information held for research purposes in general. In some instances, however, research may be carried out with a settled intention to publish.

For instance a government department may commission annual research into public attitudes towards its services. If it is intended when commissioning the research to publish the findings, then it may be reasonable to claim the exemption.

By contrast, another department is carrying out research into an area of social policy. Having conducted its research and identified a number of policy options, it decides to issue a consultation paper. While drafts of the consultation paper may be covered by the exemption, the information generated by the research programme which preceded it is unlikely to be covered since there was no clear intention to publish that material.

The Freedom of Information (Scotland) Act covers Scottish public authorities. The Scottish Act contains an exemption for information held for research purposes. For more information, contact the Scottish Information Commissioner: www.itspublicknowledge.info)

d) Information published in accordance with publication schemes

Section 19 of the Act requires authorities to publish information in accordance with their publication schemes. If the information which has been requested falls within a class of information defined in an authority's scheme, then it will clear that the information is intended for publication if it has not already been published. The issue for public authorities in this case will be to decide whether

the public interest requires an earlier release of information to the applicant than its original timetable had envisaged.

C) DECIDING WHAT IS “REASONABLE IN ALL THE CIRCUMSTANCES” AND APPLYING THE PUBLIC INTEREST TEST.

In some ways this exemption is similar to that in section 21 ([Information Reasonably Accessible to the Applicant by Other Means – see Awareness Guidance No 6](#)). In that case the exemption applies to information currently available to the applicant: in this case it applies to information which will be available in the future. In both cases, the underlying thinking is that if the applicant can or will be able to obtain the information he or she wants by another means, there is no need for a separate statutory route.

However in the case of section 22, since the requested information is not yet available, the public authority must consider whether it should keep to the original timetable for publication or whether the circumstances of the case, including the public interest, would warrant earlier disclosure.

a) The timing of publication

Given that there is already an intention to publish, the critical issue in deciding whether to respond to a request for information is one of timing. Generally, the sooner the intended date of publication, the better the case for maintaining the exemption.

There are a number of reasons why an authority might want to follow its original publication schedule:

- The release of information to the applicant may result in unfairness to others. For instance, the information may consist of an offer to subscribe for a particular service. To be fair to all, the service may be offered on a first come first serve basis which would be undermined by premature disclosure. In the case of press releases, it will usually be fair to release information to all the media simultaneously.
- The public authority may be under a duty to present a report in the first instance to a particular individual, say in the case of a complaint, or to make an announcement in a particular forum, say a report to Parliament or its staff, before making it generally available.
- An announcement may be designed to prompt enquiries from the public and may be expected to result in an increase in workloads, for instance a press release or leaflet advertising a new service. An authority may reasonably wish to ensure that it has made its own administrative arrangements before the information is released to the public.

There may be other good reasons for a public authority wishing to disclose information according to its original timetable. However, it would be wrong to refuse a request if to do so would cause no obvious harm to the authority or third parties. For instance, a public authority is planning to print a leaflet about the services it currently provides. If a member of the public were to enquire about one of those services, there would be no good reason to refuse the information.

b) Minutes of meetings

Minutes of meetings are likely to constitute information which is requested reasonably frequently. Typically minutes are prepared in draft and agreed at the following meeting before being published. While it is reasonable that an authority will only wish to publish approved minutes, frequently it should recognise the public interest in providing draft minutes to applicants who may either wish to attend or have input into the subsequent meeting.

c) Partial disclosures

A request may be for a piece of information included in a larger set of information which the authority intends to publish. For instance, a regulator may publish summaries of all the cases on which he has adjudicated in a year. If he receives a request for information about one of those cases, it would often be wrong to expect the applicant to wait for publication of the annual report, particularly if the case was one of significant public interest. It would be unlikely that this disclosure would cause administrative or other difficulties to the regulator or to disadvantage any third party.

d) Early publication

As noted above, one of the reasons why a public authority may wish to control the date of release of information is to ensure that it is fair to all those who may have an interest in the information. Where the public interest would be best served by disclosure, this may lead the public authority to bring forward a publication date.

This will be most likely to occur as a result of events which have taken place after the publication date was set. For instance a public authority might be intending to publish a report into a public health issue. Following the outbreak of a disease it might decide that there is a strong public interest in early publication of the information it had intended to publish at a later date. This decision may be triggered by a request from, say, a journalist. Where information exists only in draft, this may involve publication in a form other than that originally planned or, depending upon the state of the draft, publishing part of the information.

D) OVERLAP WITH OTHER EXEMPTIONS

The exemption in relation to information intended for future publication does not depend upon the content of the information. The decision to publish has already been made, albeit after possible amendments. The issue is the timing of publication.

As a general rule, it may be better to claim the s.22 exemption in relation to information which is relatively non-contentious but where there are sound reasons for publishing according to the original timetable (see “The timing of publication” – above) and one of the other exemptions in the Act where more sensitive information, whose disclosure might lead to a specific harm, is involved.

For instance, so far as drafts of policy papers intended for publication, a central government department may be able to rely on the exemption relating to the formulation of government policy. Other public authorities may be able to argue that disclosure would be prejudicial to the effective conduct of public affairs. Some financial information, although destined for publication, may be withheld in response to a request because for the time being disclosure might prejudice the economy or the commercial interests of a third party. Public authorities refusing requests are under a duty to explain their reasons for refusal. Where more sensitive information is involved, it is likely to be more informative to point to one of these other exemptions.

There may be other reasons for considering other exemptions. For instance, if there is uncertainty as to whether information may in fact ultimately be published, it will avoid possible dispute to claim another exemption if one is available. Similarly, where the information is intended for future publication by another public authority, it may be more certain to rely upon the exemption relating to confidential information.

E) PRACTICAL ISSUES

In practice it is likely to be relatively easy to determine whether or not it is appropriate to rely upon the exemption. Public authorities may reduce the number of requests for information which they receive and the number of times upon which they may need to rely upon the exemption by providing the public with a clear description of its planned publications, including a publication timetable. This could be included as a class of information within the authority’s own publication scheme.

It may also be helpful within publication schemes to indicate the likely date of publication within the description of the class of information. For instance, many public authorities include minutes of management board meetings as a class of information within their publication schemes. It may be helpful to indicate that the minutes will be published within a week, a month etc of the meetings.

It may also assist if drafts of documents include intended publication dates and an indication of whether any or all of the information could be released prior to publication.