



Freedom of Information Good Practice Guidance

A guide to the lifecycle of requests under section 1 of the Freedom of Information Act 2000 (FOIA)

Part 1 of the FOIA describes the general right to access information held by public authorities, and the steps that authorities must or should take to respond to requests for information. This guidance also incorporates general advice and good practice. The key sections of Part 1 of the FOIA are as follows.

Section 1	Establishes the right to be informed whether the information is held and, if so, to be provided with it.
Section 2	Categorises the exemptions in Part 2 of the FOIA into absolute exemptions and qualified exemptions which are subject to the public interest test.
Section 8	Specifies the form of requests
Section 9	Provides for a charging regime
Section 10	Sets out the timescales for response
Section 11	Allows the applicant to state how they would prefer the response
Sections 12 and 13	Explains the exemption from disclosure where a request exceeds the appropriate costs limit
Section 14	Sets out rules for vexatious or repeated requests
Section 16	Establishes the duty to provide advice and assistance
Section 17	Sets out the requirements when refusing requests

This guide has four sections.

- Requests for information (including requests for personal information)
- Applying the public interest test
- Refusing requests
- Flowchart setting out steps to take with requests for personal information.

Using the guide to answer requests

This guide is a technical, step-by-step explanation of the procedures you are required to follow under the FOIA. If we (the Information Commissioner's Office (ICO)) receive a complaint, we may ask you to show that you dealt with a particular request for information in line with the requirements set out in the FOIA and, more generally, that you have effective systems for dealing with all requests.

This guide does not attempt to set out any systems which public authorities may want to put in place. In most cases, it will be unnecessary (and probably counterproductive) to adopt a highly formal approach. As an example, section 17 of the FOIA requires an authority to issue a refusal notice when they decide they are unable to respond to a request under section 1. However, the circumstances that lead to a refusal notice may vary considerably from case to case, for example:

- The request may be for personal information which the authority proposes to deal with under section 7 of the Data Protection Act 1998.
- The request may be for environmental information, to be dealt with under the Environmental Information Regulations.
- The information may be available through the authority's publication scheme.
- The information may be exempt and the public authority does not consider that the public interest favours disclosure.

In the first three cases, the FOIA requires you to issue a refusal notice although this should also explain that you will deal with the request in line with the appropriate regime. The fourth case calls for a more detailed and formal response, particularly as the applicant may want to challenge the decision.

Requests for information

(References to personal data about the applicant are in bold.)

Time limit: requests should be dealt with promptly and in any event not later than 20 working days from when you receive them (unless you are considering the public interest test).

Stage 1 - receive the request

- Establish if the request is valid - see section 8 for the criteria (it is in writing, states the name and address, and describes the information).
- If the request is invalid, where possible, advise the applicant to reformulate their request.
- Provide advice and assistance as appropriate (see section 16 FOIA and section 45 code of practice (Access Code)).
- Ask the applicant for any further information necessary to identify or locate the information requested. (This applies to all information, whether personal or non-personal.)
- Record the valid request in your system for internal logging or monitoring.
- Other considerations: for vexatious or repeated requests, go to stage 9 and 'Refusal of requests' point 1 below.
- **A request for the applicant's own personal information will continue to be treated as a subject access request under the Data Protection Act 1998.**
- **Request appropriate subject access fee, if applicable. (In this case, the 40-day time limit does not begin until you receive the fee.)**

Stage 2 - establish if the information is held

- Check relevant records, for example, indexes, files and directories. Consult staff as appropriate.
- If you do not hold the information, let the applicant know. (Consider whether you could transfer the request to a more appropriate public authority – see section 45 code of practice (Access Code) for guidance.)
- If it is not obvious why the information is not held it may be appropriate to provide further explanation. For example, if the information has been destroyed in line with an authority's retention and disposal schedule, it would be helpful to explain this.

Stage 3 - estimate the cost

- If you hold the information, estimate whether the cost of complying with the request exceeds the 'appropriate limit' as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (Fees Regulations). This has been set at £600 for public authorities listed in Schedule 1, Part 1 of the FOIA (central government), and £450 for all other public authorities. You may only consider the following factors when estimating the cost.
 - Determining whether the information is held
 - Locating the information or documents containing the information
 - Retrieving the information
 - Extracting the information from documents
- Any costs incurred by staff carrying out these activities must be calculated at the rate of £25 per person per hour, regardless of the actual costs involved.
- Under section 12(2), if you estimate that the cost of complying with the request would exceed the appropriate limit, you do not have to comply. However, you must provide advice and assistance to the applicant (see section 16 FOIA, and paragraph 14 of the Access Code).
- If the costs exceed the appropriate limit, advise the applicant to reformulate their request and provide advice and assistance as appropriate
- Section 12(2) still requires you to comply with the duty to confirm or deny you hold the information requested, unless the costs of this in itself would exceed the appropriate limit (or a relevant exemption applies, see 'Refusing requests').
- If the cost still exceeds the appropriate limit, notify the applicant (see 'Refusing requests').
- Consider whether to aggregate costs. (Section 12(4) advises that where two or more requests for the same or similar information are made within any period of 60 consecutive working days, by the same or different people, who appear to be acting together or as part of a campaign, you should consider the estimated cost of complying with any of the requests as the estimated total cost of complying with all of them. See also section 5 (1)(a) and (b) of the Fees Regulations.)

Stage 4 - charge fee

- Decide whether to charge (see section 9(1)). There is no obligation to charge.
- If there are provisions made under another law for a fee then that fee applies (see section 9(5)).
- Issue the fees notice. The applicant then has three months to pay the required fees, beginning on the day the fees notice is given to them.
- If the applicant disputes the fee, they can appeal through a three-stage process.
 - 1 Your internal procedure
 - 2 Request the decision of the ICO
 - 3 If they are still dissatisfied, they can appeal to the Information Tribunal
- Section 13 provides that where the cost of compliance exceeds the appropriate limit, the information can be disclosed at the discretion of the public authority, and any fee for this information must be determined in line with the Fees Regulations.
- **The 20-day period is extended by up to three months for the applicant to pay the fee.**

Stage 5 - fee received

- The 20-day period resumes the day after the fee is received.

Stage 6 - gather the relevant information

- Gather the information from all relevant internal sources.

Stage 7 - assess for obligatory disclosure

- Establish what information must be considered for disclosure
- Check whether any exemptions apply
- If the applicable exemptions are not absolute, decide whether you have a duty to disclose any 'exempt' information in the public interest. (The process is described below.)
- **Where the applicant's own personal information forms part of the request or this would be included in the response, consider the extent to which the personal data exemption, section 40(1), would apply.**
- If the request relates to personal information about other individuals, consider section 40(2) to (4). You will also need to consider the eight data protection principles which can be found in Schedule 1, Part 1 of the Data Protection Act 1998 (see the flowchart below).
- Consider how to respond if the format has been specified (see section 11).
- Advise the applicant if an alternative method of communicating the information is necessary and explain why (see section 11(2) to (4)).

Stage 8 - other issues and considerations

- Should you consult any third parties before disclosure? For example, where their legal rights may be affected, or to help determine if an exemption applies (see part IV of the Access Code for guidance).

Stage 9 - respond to request

- Depending on the nature of request, the response could be multi-faceted. (For example, the applicant's preference may be to inspect the record in person.)
- Advise the applicant in writing that you hold the information if you have not already done so (see section 1(1)(a) and stage 2 above) unless this confirmation is exempt.
- Provide any information which you are obliged to disclose (see section 1(1)(b)).
- Where you do not have to confirm or deny whether you hold the information requested, or you are not required to disclose the information because an exemption applies, issue a refusal notice for that information. (See 'Refusing requests'.)
- **In the case of a request for information where part of the request will be dealt with as a subject access request, inform the applicant and provide the applicant's information in an intelligible form, promptly and within the relevant timescale. (See subject access provisions in the flowchart, and the Data Protection Act 1998 for full details.)**
- Complete your internal procedure to show you have responded.

Applying the public interest test

Time limit - when you consider the public interest test, section 10(3) requires you to comply 'within such time as is reasonable in the circumstances'. We consider that public authorities should aim to respond to **all** requests, including where the public interest is being considered, within 20 working days. In cases where the public interest considerations are exceptionally complex it may be reasonable to take longer but, in our view, in no case should the total time exceed 40 working days.

Section 17(2) requires you to give, in your refusal notice, an estimate of the date by which you expect to reach a decision on where the public interest lies.

Stage 1 - Apply the public interest test to qualified exemptions

- Decide whether you should disclose in the public interest the fact that the information is held (see section 2(1)(b)).
- Decide whether you should disclose the information itself in the public interest (see section 2(2)(b)).
- Where the request concerns personal information, you must consider a public interest disclosure if:
 - the request is for information about another individual and that other individual would not have access to their own information because an exemption applies under the Data Protection Act 1998; or
 - the request is for information about another individual and that other individual has issued a valid section 10 notice and disclosing the information to a member of the public would contravene this (see flowchart).

- Where the information is exempt because section 35 applies (formulation or development of government policy), you must consider the public interest in providing factual information which has been used, or is intended to be used, to provide an informed background to decision-making.

Stage 2 - respond to request

- Disclose the fact that you hold the information, unless the public interest in not confirming or denying outweighs the public interest in disclosure.
- Disclose the information, unless the public interest in withholding outweighs the public interest in disclosure.
- Where you do not have to disclose the information, see 'Refusing requests'.

Refusing requests

If you do not hold the information requested and tell the applicant this, you are not refusing a request, but giving a negative response. However, if the applicant argues that the information is held, it could lead to a complaint to the ICO. Authorities are advised to provide an explanation as to why the information is not held where appropriate.

The issue of transferring a request to another appropriate authority is considered in the Access Code issued under section 45. Where a request is transferred the 20 working days commences from the date of the transfer of the request.

Reasons for refusing a request

1 Vexatious or repeated requests (see 'Request for information' stage 1)

- Under section 14 of the FOIA, you do not have to comply with:
 - a vexatious request; or
 - a repeated request. (This is any request which is 'identical or substantially similar' to a request from the same person, that you have previously complied with, unless a reasonable amount of time has passed, see Awareness Guidance 22).
- Issue a refusal notice stating that you are relying on an exemption for a vexatious or repeated request (section 14 (1) to (2)).
- Under the section 45 code of practice, you do not have to provide assistance to applicants whose requests are vexatious.
- Under section 17(6), you do not have to issue a refusal notice if you have already done so in relation to a previous request by the same applicant, and it would be unreasonable 'in all the circumstances' to serve another notice in relation to the current request.
In this case, you do not need to respond, however, you should document this in line with your internal procedures.

2 The cost of locating and retrieving the information exceeds the appropriate limit (see 'Request for information' stage 3)

- Under section 12(1), you do not have to comply with a request if the estimated cost of doing so would exceed the appropriate limit.
- If the cost of locating the information would exceed the limit, issue a refusal notice* stating that fact (section 17(5)) and provide advice and assistance in reformatting the request (see section 16 FOIA and paragraph 14 of the Access Code).

3 The aggregated costs exceed the appropriate limit (see 'Request for information' stage 3).

- The Fees Regulations allow public authorities to aggregate the costs of requests for information, where two or more requests for the same or similar information are made within any period of 60 consecutive working days:
 - by one person; or
 - by different people who appear to be acting as part of a campaign.
- If in this case, the aggregated cost exceeds the appropriate limit, you do not have to provide the information. Issue a refusal notice* stating that fact (section 17(5)).

4 The information is exempt from the duty to confirm or deny (this may apply only to part of the information requested)

- Under section 17(1), if you do not have to confirm or deny whether you are holding the information requested (because of any exemption in Part II), you must give the applicant a refusal notice within 20 days:
 - saying this;
 - specifying the relevant exemption; and
 - stating why the exemption applies.
- Issue a refusal notice containing the information specified in section 17(1) bearing in mind section 17(4).
- You do not have to say why an exemption applies if this would mean revealing whether or not you hold the information (section 17(4)).
- Section 2(3) lists the absolute exemptions.
- Where a qualified exemption applies, state in the refusal notice if you have not yet decided whether a public interest disclosure should be made, and give an estimate of the date by which you expect to make a decision (section 17(2)).
- Refusing information following a consideration of the public interest is covered at point 8 below.

You can find further guidance on the duty to confirm or deny in Awareness Guidance 21.

5 The information is exempt from disclosure (this may apply only to part of the information requested)

- Under section 17(1), if you are claiming the information requested is exempt, you must give the applicant a refusal notice, within 20 days:
 - saying this;
 - specifying the relevant exemption;
 - stating why the exemption applies; and
 - detailing the applicant's right to appeal.
- Issue a refusal notice containing the information specified in section 17(1) bearing in mind section 17(4).
- As before, you do not have to say why the exemption applies if this would mean revealing exempt information (section 17(4)).
- As before, refusing information having applied the public interest test is covered at point 7.
- In the case of the qualified exemptions, state in the notice if you have not yet decided whether a public interest disclosure should be made, and give an estimate of the date by which you expect to make a decision (section 17(2)).

6 It would not be in the public interest to confirm or deny that you hold the information (this may apply only to part of the information requested)

- Under section 17(3), if you decide that the public interest in not revealing whether or not you hold the information requested outweighs the public interest in confirming or denying this, you must give the reasons for your decision in your refusal notice (section 17(1)) or in a separate 'public interest' refusal notice within a reasonable time (see 'Applying the public interest test' above)).
- If you reasonably need more time to make a decision under the public interest test, you must tell the applicant which exemption you are considering and an estimate of when you will make a decision.
- Issue a refusal notice including the reasons for the decision, unless this would mean revealing exempt information (s17(4)).

7 It would not be in the public interest to disclose the information (this may apply only to part of the information requested)

- Under section 17(3), if you decide that the public interest in withholding the information requested outweighs the public interest in disclosing it, you must give the reasons for your decision in your refusal notice (section 17(1)), or in a separate 'public interest' refusal notice within a reasonable time (section 17(3)).

- If you reasonably need more time to make a decision under the public interest test, you must tell the applicant which exemption you are considering and an estimate of when you will make a decision.
- Issue refusal notice including the reasons for the decision, unless this would mean revealing exempt information (s17(4)).

For further information on refusal notices please refer to the Refusal Notice guidance on our website.

Appeals

The applicant may appeal a decision by a public authority to refuse their request through a three-stage process.

- 1 Your internal complaints procedure (see part VI of the Access Code)
- 2 Request the decision of the Information Commissioner (under section 50)
- 3 Appeal to the independent Information Tribunal (under section 57)

All notices served by the Information Commissioner may be appealed to the independent Information Tribunal.

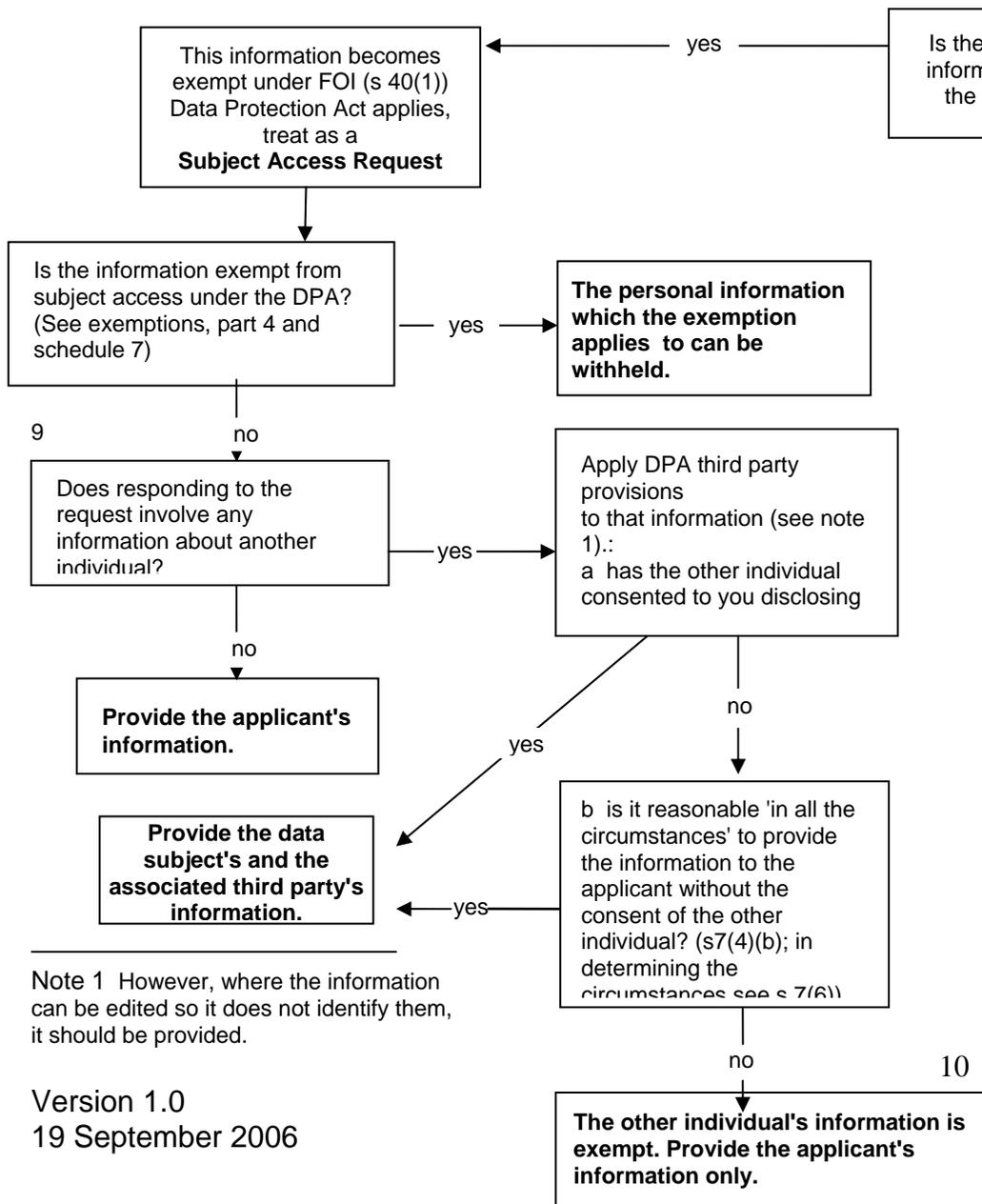
Flowchart

The flowchart below provides a general summary to assist understanding, for more detailed guidance please refer to the Data Protection technical guidance note, 'Dealing with subject access requests involving other people's information' on our website.

Flowchart

Freedom of Information Act 2000 Steps to take with requests for personal information

Data Protection Act 1998 (DPA) (as amended by the FOI Act 2000)



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FOI Act 2000

