



## Freedom of Information Act Awareness Guidance No. 6

### Information Reasonably Accessible to the Applicant by Other Means

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 reasonably accessible to the applicant by other means. The exemption is set out in section 21 of the Act.

#### A) WHAT DOES THE ACT SAY?

The **right to know** is set out in Section 1 of the Act. In fact, an applicant for information has two related rights. These are:

- the right to be informed whether or not the information requested is held by the authority, and, if so,
- the right to have that information communicated to him.

The Act goes on to make clear that these rights are subject to exemptions and, in section 21, that a public authority does not need to provide information under section 1 of the Act if that information is reasonably accessible to the applicant by other means. It is important to note that s.21, unlike many of the other exemptions in the Act, is not subject to the public interest test: if, as a matter of fact the information requested is accessible to the applicant by other means, then it is exempt.

The thinking behind the exemption is that if there is another route by which someone can obtain information, there is no need for the Act to provide the means of access. Public authorities are under a duty, set out in section 16 of the

Act, to “provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made requests for information.” This means that there should be no possibility of applicants being left in any doubt as to how they can obtain the information which they want.

In the great majority of cases, it will be obvious whether the exemption applies. Occasionally there may be some doubt as to whether the information is genuinely accessible to the particular applicant and whether the authority must therefore do more than simply advise applicants as to how they can obtain the information they want. This guidance looks at the questions which may arise.

## **B) CASES WHERE PAYMENT IS REQUIRED**

Applicants may complain that information is not reasonably accessible because it is not free. However, section 21 makes it clear that information may be reasonably accessible to the applicant even though there may be a charge.

There are two cases where charges may be made:

- Where there is a specific statutory scheme under which information is provided for a fee, such as information from the local land charges registry.
- Where the information is provided under the authority’s publication scheme and the scheme indicates that a charge may be made for information falling within a particular class. (See also the Commissioner’s guidance on charging under publication schemes.)

There will, of course, be some cases where the fact that there is a charge for information may mean that it is not reasonably accessible by the applicant. For instance, a public authority may be asked for information contained in its annual report. It may not be reasonable to require the applicant to purchase a copy of the report if the request is only for a small amount of the information contained in it.

## **C) DISCLOSURES REQUIRED BY LAW**

Section 21 distinguishes between information which an authority or another person is obliged to publish or supply by law and other information. If there is a legal duty to make information available, then it can be considered to be reasonably accessible even though it is not described in a publication scheme. This provision applies even if the information requested is available under statute from another public authority. For instance, a public authority might be asked for information relating to a company which it regulates. If that information is in fact available under statute from Company’s House, then it can be considered as reasonably accessible to the applicant.

There is an important exception to this general rule: information which is only available on inspection, for instance by visiting the premises of the authority, is not to be considered reasonably accessible even though it is disclosed or published under statute unless it falls within a class of information included in the authority's publication scheme.

Whether the information is held by the authority itself or a third party, it is important to remember that public authorities are under a duty to assist applicants for information. In this context, this may mean informing them of their rights to obtain information and advising them how to obtain it.

Even though there is no requirement to include information which the authority must disclose under statute within a publication scheme, it will be helpful to do so. Among other things this will be likely to reduce the number of times that the authority has to explain to applicants that the information which they want is in fact available by other means. Similarly, even though a public authority may be within its rights to refer an applicant for information to another authority which has a statutory duty to provide it to the applicant, it will often be as easy for the first authority to provide the information to the applicant as it is to refer him or her to the second authority.

#### **D) INFORMATION WHOSE DISCLOSURE IS NOT REQUIRED BY LAW**

Where information is not published or made available under statute (other than the FOI Act) but is only available on request from the authority, then it cannot be considered as reasonably accessible unless it falls within a class of information defined in the authority's publication scheme.

It will generally be fair to assume that any information described within a publication scheme and made available under it is reasonably accessible to an applicant and that all the public authority needs to do, therefore, is to draw the applicant's attention to the scheme.

Occasionally this may not be sufficient. The Act does not give public authorities the right to enquire into the circumstances of the applicant. However, if the authority knows or is told of circumstances which will affect the applicant's ability to access the information it should take account of this when handling the request.

##### **a) Travelling and Mobility**

If the normal means by which a public authority publishes information is by making it available for inspection but the applicant either lives a considerable distance away or has mobility problems, then the authority should consider providing a hard copy of the information.

(This does not mean that information **must** be provided in hard copy on every occasion that it is requested: simply that the authority should **consider** doing so. A county records office, for instance, whose information may be accessed by visitors, would not normally be expected to photocopy the information which it holds simply because an applicant does not happen to live near by.)

### **b) Non-English Speakers**

If it is clear from the request that the applicant would have difficulty in understanding information in English, it may be reasonable to provide a translation. For instance if the applicant is a member of a local community served by the authority but for which English is not the first language, it may be right to provide a translation in that case. The Act does **not**, however, place a general duty upon public authorities to translate information which it holds into other languages. Authorities providing services in Wales will be aware of their responsibilities under the Welsh Language Act 1993.

### **c) Disability**

Similarly, if an applicant is disabled and requires information in another form, for instance in Braille or on audio tape, then consideration should be given to providing information in the form requested. Again, the Act does not place a duty to provide information in Braille or on audio tape although, as noted above, it should communicate information by the applicant's preferred means if it is "reasonably practicable" to do so.

### **d) Provision of information in non-electronic form**

Publication schemes must specify the manner in which information is published. For many authorities the preferred form of publication is by the web. If this is the only form of publication, then they should provide information in hard copy form to applicants who do not have access to the internet on the basis that the information is not reasonably accessible to the applicant. In such cases, where the authority is not relying upon s.21, it may be entitled to charge for photocopying and postage in accordance with the Fees Regulations.

## **E) CONSIDERING WHETHER TO USE THE EXEMPTION**

The question of whether information is reasonably accessible to the applicant by other means is a matter of fact. In deciding to make use of the exemption, public authorities have two choices:

- to make the information available to the applicant outside the framework of the Act (i.e. making it accessible by other means)
- to provide the information according to the normal requirements of the Act

The main consideration is likely to be whether the authority wishes to charge a fee in accordance with the Fees Regulation. These provide that authorities are able to recover the cost of disbursements such as photocopying and postage. If it is decided to deal with a request according to the normal requirements of the Act, it will be important to consider section 11. This places a duty on public authorities to communicate information requested by means specified by the applicant if it is "reasonably practicable" to do so.

In deciding whether to charge a fee to some applicants but not to those for whom the information is reasonably accessible by other means, authorities should consider any statutory duties to provide information in other forms.

The Welsh Language Act 1993, the Race Relations Act 1976 and the Disability Discrimination Acts, particularly where they apply to public authorities, need to be taken into account.

In addition to statutory requirements, public authorities are also likely to have policies, for instance on the delivery of services for non-English-speaking members of local communities. Giving access to information should be regarded by public authorities as an integral part of their business. Their standards of service delivery should usually complement rather than conflict with their responsibilities under the FOI Act.

## **F) PRACTICAL ISSUES**

Section 21 is not likely to give rise to many practical difficulties. Generally it will be clear from the nature of the information requested whether it is reasonably accessible to the applicant by other means. The following steps may, however, assist in dealing with any difficulties which may arise.

- Many public authorities already make some information available on request. It is likely to be helpful to distinguish clearly between information published according to a statutory scheme and information made available as a service or on a discretionary basis. If the authority anticipates making use of the s.21 exemption then it should make sure that all non-statutory disclosures fall within classes contained in its publication scheme. There are also good reasons for including statutory disclosures within schemes.
- Authorities making charges for the supply of information should ensure that this is clearly indicated within their schemes. It will often be helpful to include, as a class of information within a publication scheme, a list of documents and other information available at a charge.
- Many public authorities already have policies in place regarding access to information for those with physical disabilities and also as to the provision of information to non-English speakers. It is important that staff

with responsibility for responding to FOI requests are fully aware of these policies and able to follow them.

- Authorities may wish to review the means of publication specified in their publication schemes. Where only limited forms of publication (e.g. only electronic) are currently listed, they may wish to describe the alternative means by which information is made available together with any charges that may be made.