



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

Freedom of Information Awareness Guidance No 23

Advice and Assistance

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 duty placed on public authorities by section 16 of the Act to provide advice and assistance to applicants for information. The Guidance takes the form of Frequently Asked Questions (FAQs).

A) WHAT DOES THE ACT SAY?

Section 16 of the Freedom of Information Act 2000 (the Act) places a duty on public authorities **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 to it.** The section goes on to state that this duty is complied with when the provision of advice and assistance in any case conforms with the section 45 Code of Practice (the "Access Code").

The provision of advice and assistance is a wide-ranging duty– for example it applies both to prospective and actual applicants for information – and has the potential to be relevant to most, if not all, stages of the request process under the Act. The provision of advice and assistance can be seen as the means by which a public authority engages with an applicant in order to establish what it is that the applicant wants and, where possible, assists him in obtaining this, maintaining a dialogue with the applicant throughout the process.

B) GENERAL QUESTIONS

1. How does a public authority judge what is a reasonable provision of advice and assistance?

A public authority should adopt a flexible approach and treat each application, or potential application, for information on a case by case basis. In many straightforward cases, the nature of the advice and assistance to be offered will be clear at the outset. In other cases, dialogue with the applicant will be necessary to establish what advice and assistance might be appropriate, and therefore reasonable. In the case of valid requests this should be addressed promptly as the 20-day clock will be ticking. The duty to provide advice and assistance under the Act will much of the time be fulfilled by the delivery of an authority's usual customer service standards.

Examples of what is reasonable may include:

- keeping an applicant advised of progress with regard to his or her request;
- advising a potential applicant of his or her rights under the Act;
- assisting an applicant to focus his or her request, perhaps by advising of the types of information available within the requested category;
- advising an applicant if information is available elsewhere, and explaining how to access this (for example via the authority's publication scheme).

In all cases the Commissioner strongly recommends that early contact is made with an applicant and that for any advice and assistance to achieve its purpose it should be delivered in a clear and intelligible manner.

2. In order to offer advice and assistance to an applicant, is it permitted to enquire into the reasons why the request has been made?

No. The purpose of providing advice and assistance is to help an applicant to exercise his rights under the Act; it cannot be the means by which a public authority seeks to discover the reasons for a particular, or potential, application. However, public authorities should bear in mind that section 1(3) of the Act does allow them to request further information from the applicant if this is needed in order to identify and locate the information requested. The Access Code provides an indication of the types of assistance that can be offered so that the applicant can describe the information he is seeking.

While it will be good practice to make contact with the applicant as soon as possible after the request is made, public authorities should be sensitive to the circumstances of the applicant when considering the appropriate method of contact. For example, requests for information will often be made in the context

of complaints against the public authority. In such cases it may be inappropriate to contact an applicant by telephone – which would otherwise be the preferred means of establishing early contact – if this would give the impression of the public authority exerting undue pressure on the applicant.

3. Will other statutory provisions influence the advice and assistance that a public authority should offer?

It is for each public authority to determine whether the requirements of other pieces of legislation will impose further obligations in relation to how they may advise and assist an applicant for information. For example, compliance with the Disability Discrimination Acts may impose requirements on how an authority responds to requests for information from a disabled applicant. In the same way, there may be statutory provisions – such as the Welsh Language Act and the amended Race Relations Act 1976 – which require public authorities in some circumstances to provide information in other languages. However, even in circumstances where there is no statutory duty to provide information in languages other than English, if an authority routinely deals with minority communities in their own languages, it may be appropriate, and a matter of good practice, to respond to requests for information in the same way.

Similar considerations will apply to communications received by public authorities in foreign languages. There is no general duty under the Freedom of Information Act to translate such communications, but, as above, duties may be imposed by other statutes. For those authorities who deal with languages other than English (or Welsh) on a regular basis it will be good practice to obtain a translation. In either case, if it then becomes clear that the communication is a request for information, the public authority should ensure that the requirements of the Freedom of Information Act are complied with.

These issues are considered in [Awareness Guidance No 6](#) on the exemption in the Act concerning information that is reasonably accessible to the applicant by other means (section 21).

The Information Commissioner has received a number of enquiries from public authorities who are concerned about the consequences of a failure to recognise when communications written in a foreign language are in fact requests for information. Whilst the Commissioner acknowledges that this may, on occasion, lead to a technical breach of the Act, it is hard to imagine circumstances where a public authority would be penalised for failing to deal with such cases as requests for information in accordance with the requirements of the Act.

4. If an applicant does not respond to the advice and assistance that is provided by a public authority, is the authority obliged to offer the advice and assistance a second time?

In most cases a public authority will not be required to contact the applicant a second time, for example where the applicant simply elects not to follow the advice and assistance offered by the authority. However, there may be cases where there is genuine doubt whether the advice and assistance has been received by the applicant. Here, it would be sensible for the public authority to reissue the advice and assistance. (This is an example of circumstances where it would be good practice for a public authority to keep a record of the advice and assistance that has been provided.)

5. Which staff within a public authority should have responsibility for providing advice and assistance when a request is received?

As a request for information under the Act can be received anywhere in an organisation it is important that all staff whose role brings them into contact with the public and other organisations are able to identify a request for information under the Act and provide appropriate advice and assistance to applicants where possible. Where this is not possible, the request should be passed to the appropriate person/department. This relates to the wider issue of general FOI awareness-raising and staff training at various levels throughout an organisation, and it will be for each public authority to determine its own procedures for handling information requests.

6. In order to comply with section 16 is a public authority limited to providing the advice and assistance highlighted in the code of practice?

Conformity with the provisions of the Access Code concerning advice and assistance will ensure compliance with section 16 of the Act. However, in terms of best practice, it is may be possible to provide advice and assistance that exceeds the requirements of the Access Code. The circumstances of each case will determine the most appropriate course of action, which again emphasises the need for public authorities to adopt a flexible approach.

C) ADVICE & ASSISTANCE TO THOSE WHO ARE CONSIDERING MAKING A REQUEST

7. In what circumstances might a public authority offer advice and assistance to some-one who proposes to make a request?

It is anticipated that there will be three common circumstances:

- Where someone has made it clear that they intend to make a request for information. Examples of advice and assistance in such cases will include explaining the types of information the authority holds and the

format in which it is available, and providing information on the fees regulations and the charging policy of the authority.

- Where a request has been made, but it cannot be regarded as a valid request as insufficient information has been provided to allow the public authority to identify and locate the information requested. This is discussed at Question 9.
- Where a request has been refused, for example on grounds of excessive cost, and it is appropriate for the public authority to assist the applicant in the making of a subsequent request. This is discussed at Question 12.

In addition to these particular cases, public authorities should consider what information can be made available on a proactive basis which would assist people in the event of them making a request for information at some time in the future. General promotion of the right to know through the public authority's website or publication scheme is one example of this. Also the Access Code recommends that each public authority should provide details of its procedures for dealing with requests by means of its publication scheme. This will be an important means of providing general advice to a wide range of potential applicants.

8. What advice and assistance should be offered to those people who have difficulties in making or framing a written request?

A public authority should use its own discretion in deciding what level of advice and assistance is appropriate for applicants who clearly have difficulty in making a written request. This could apply equally to persons who have made a request or are proposing to make a request. Some applicants may have difficulty reading and writing; others will be able to write but have difficulty in expressing themselves clearly. Public authorities should adhere to their usual customer service procedures in such cases and provide the level of assistance appropriate to the circumstances of the individual applicant. The Access Code provides some examples of appropriate assistance. Good practice could include: directing the applicant to another agency who may be able to assist, taking a written note over the telephone which it then sends to the applicant for confirmation (although, on receipt of the note, the applicant would still require assistance in verifying the note and providing written confirmation). In cases where some elements of a request can be clearly identified, they should be complied with in the usual way, with assistance being provided regarding the remainder of the communication.

9. What further information can be requested by a public authority to assist it in identifying and locating the information requested by an applicant?

If an authority has informed the applicant that it requires further information in order to be able to identify and locate the information requested, it is not obliged to comply with the request. However, advice and assistance should still be

offered to the applicant so that the request can be clarified. This is likely to occur in cases where applicants have little or no knowledge of what information a public authority holds and how it is structured. Public authorities should be flexible. In cases where more information is required, an applicant should be contacted as soon as possible, and authorities should be prepared to explain why they are asking for more information. As discussed in the answer to question 2, the Code stresses the importance of not giving the impression that a public authority is enquiring into the reasons behind a request.

D) ADVICE & ASSISTANCE TO PERSONS WHO HAVE MADE REQUESTS

10. Once a valid request has been received, does the 20 working day period stop whilst a public authority offers advice and assistance to the applicant?

The 20 working day period does not stop. See question 4 of the Commissioner's [Awareness Guidance No 11 Time for Compliance](#). Once again it is important to stress the distinction between advice and assistance that is offered before a valid request is made and that offered following receipt of a valid request. As regards the former, this could be where the public authority requires the applicant to provide clarification so that the information requested can be identified and located. In such cases the 20 working day clock does not start until that further clarification is provided. On the other hand, any advice and assistance provided following receipt of a valid request does not stop the 20 day clock.

11. What sorts of advice and assistance should be offered to someone who makes a request for information that relates to more than one piece of legislation, for example a request involving the Freedom of Information Act and the Data Protection Act?

Each public authority should develop its own procedures for handling such requests. However, the applicant should be informed at an early stage if their request spans legislation other than the Freedom of Information Act, and a clear explanation of the possible consequences should be given, for example, differences in timescale and, possibly, fees. It is good practice to keep the applicant advised of progress and any unexpected delays or difficulties that may arise.

12. If an authority estimates that complying with a request will exceed the cost limit, can advice and assistance be offered with a view to the applicant refocusing the request?

In such cases the authority is not obliged to comply with the request and will issue a refusal notice. Included within the notice (which must state the reason for refusing the request, provide details of complaints procedure, and contain particulars of section 50 rights) could be advice and assistance relating to the

refocusing of the request, together with an indication of the information that would be available within the cost limit (as required by the Access Code).

This should not preclude other 'verbal' contact with the applicant, whereby the authority can ascertain the requirements of the applicant, and the normal customer service standards that the authority usually adopts.

13. Can a public authority assist an applicant in focusing a request even where compliance with the original request falls within the cost limit?

In such cases the public authority cannot issue a refusal notice on the basis of the cost limit, and so any refocusing must be done in the context of the original request. It is therefore advisable for the authority to make early contact with the applicant and establish whether they would welcome any help in reducing the scope of the request. For example, in the case of a large amount of information there may be a high cost in terms of photocopying and other disbursement charges and the applicant may appreciate the chance to reduce this cost. Once again good customer service practice will dictate that dialogue with the applicant is established so that the options available to him can be clearly spelt out.

14. If an applicant indicates that he is not prepared to pay the fee requested by a public authority, is the authority still obliged to offer any advice and assistance?

Paragraph 13 of the Access Code explains that in these circumstances the public authority should consider what, if any, information may be provided to the applicant free of charge. It should also consider whether any of the requested information may already be available elsewhere, for example via its publication scheme. It might also be good practice for a public authority to consider assisting in refocusing the request by explaining what sorts of information may be available for a lesser fee.

15. If a person requests that information is communicated by specific means or in a specific format, but it is not practicable for the public authority to give effect to the preference, will it be appropriate to offer advice and assistance to the applicant?

It is important that if a public authority is unable to meet such a request, it considers whether the information can be provided in another format, and discusses this with the applicant. For example, if a request is received asking for information to be forwarded in a particular format such as a CD-Rom, and the public authority decides this is too costly to produce, alternatives should be considered and discussed with the applicant.

16. When a public authority receives what appears to be a request that is designed to disrupt the work of the authority and may potentially be vexatious, is there any requirement to offer advice and assistance?

The Information Commissioner recognises the difficulty in establishing whether a request is indeed vexatious and has provided further advice on this subject in [Awareness Guidance No 22](#)

There may be cases where appropriate advice and assistance has been offered as part of the process of ascertaining whether a request is vexatious (e.g. to assist in clarification of the request - see questions 2 and 10; or to assist in refocusing a request – see question 13). If such advice and assistance is not acted upon by the applicant this could also contribute to the decision as to whether the particular request may be deemed vexatious.

17. When might a public authority provide advice and assistance to an applicant whose request for information has been refused on the basis of an exemption?

There are likely to be many instances where this will be the case. For example, the exemption at section 21 may be applicable if a public authority is aware that the information requested is reasonably accessible to the applicant by other means. In such cases the authority should advise the applicant so that he is no doubt as to how the information can be obtained. For example, although information is exempt if it is available through an authority's publication scheme, the authority should explain that the requested information is available through their scheme and enclose a copy or direct the applicant to it. Similarly, if information requested is exempt under s.22 (information intended for future publication) it would be reasonable for a public authority to indicate clearly to the applicant when that information is expected to be published.

The provision of advice and assistance may also be appropriate in cases involving other types of exemption. For example information may legitimately be exempt if it is subject to legal professional privilege (section 42). A request may be made to one public authority for details of legal advice given to another. As the privilege belongs to the client, the applicant can be directed to the client authority to see whether it would be prepared to waive the privilege.

18. What advice and assistance should be provided when the authority does not hold some or all of the information or it is available elsewhere?

If the requested information is already publicly available (either via their publication scheme or elsewhere), the applicant should be advised of this and assistance offered where appropriate.

If a public authority receiving a request is aware that the information is held by another authority, the request may be transferred to that authority, in line with

Part III of the Access Code. The Information Commissioner also advises that as best practice, the applicant should be consulted prior to any transfer taking place.

Similarly, if it is known that the information is held by a public body in another jurisdiction – for example a Scottish public authority subject to the Freedom of Information (Scotland) Act 2002 – the applicant should be advised accordingly.