

An overview of the
Freedom of Information Act 2000
and the
FOI Regulatory Framework

ico.

Information Commissioner's Office

Background to FOI in the UK

- Concept of access to public information newer in UK than many other countries
- Private Members' Bills (proposed law from individual parliamentarians) – several since 1978
- Labour Party election manifesto 1997
- Your Right to Know ('White Paper' or statement of government policy, 1997)
- Draft FOI Bill 1999
- FOI Act 2000 (30 November 2000)
- Implementation
 - Obligation for public bodies to introduce publication schemes 2002-2004
 - Obligation for public bodies to answer requests for information from 1 Jan 2005
 - Statutory instruments (secondary legislation) for detail and additional public authorities

FOI in other countries

- Sweden 1776
- USA 1966
- Australia 1982
- New Zealand 1982
- Republic of Ireland 1997
- Scotland 2002

Key Features of FOIA 2000

- Publication schemes
- Right to know whether information held
- Right to have information communicated
- Subject to exemptions
- Public interest test for qualified exemptions
- Information Commissioner for complaints resolution
- Appeals to First Tier Tribunal (Information Rights)

Structure of FOIA 2000

- Part I – Access to Information held by public authorities
- Part II – Exemptions
- Part III – General functions of Secretary of State, Lord Chancellor and Information Commissioner
- Part IV – Enforcement
- Part V – Appeals
- Part VIII – Miscellaneous

Public Authorities

- Government Departments
- Local authorities
- Schools and Colleges
- Health providers
- Police
- Others

Publication Schemes

- Statutory requirement of proactive disclosure
- A list of what information is available and how
- Commissioner to approve schemes – see FOIA section 20
- Duty to publish in accordance with scheme
- Duty to review scheme

Requests – definition

- In writing, legible, can be electronic
- States the real name of the applicant and an address for correspondence (eg postal or email)
- Describes the information requested

Requests - fees and cost limit

- 'Appropriate Limit' in FOIA determines if public authority has to comply with request (above the limit it may refuse)
- Appropriate Limit and Fees Regulations 2004
 - £600 (=24 hours of work) for central government departments
 - £450 (=18 hours of work) for other public bodies
- Fees limit applies to search, retrieval and extraction costs; not time for consideration/applying exemptions
- Fees Notice should be issued to inform applicant of disbursements within 20 working days of receipt of request
- Disbursements, costs directly incurred communicating the information to the applicant, can be charged as appropriate when information supplied. Unconnected to appropriate fees limit

Time for compliance

- Prompt, not more than 20 working days
- Some variations in time allowed for compliance e.g. school holidays
- Extensions in time allowed for compliance may be allowed for public interest test but estimate for date of decision should be given

Exemptions

- Absolute
 - eg Security Services, Court records, information in confidence
- Qualified
 - eg Commercial interests, international relations, crime prevention
- Public Interest Test

Public interest test

- Does the public interest in maintaining the exemption **outweigh** the public interest in disclosure?
- If equal, disclose (presumption in favour of disclosure).

Arguments in favour
of disclosure



Arguments in favour
of the exemption

Powers of Information Commissioner

- Decision Notice
- Enforcement Notice
- Information Notice
- Appeals to Information Rights Tribunal
- Further appeals
- Non-compliance – Contempt of Court

Decision Notice

- Specify failure to comply with Part I requirement (and reasons)
- Order steps required “for complying with that requirement”
- Period within steps to be taken (not within time limit for appeal)
- Give particulars of right of appeal

FOIA 2000 - Relationship with other Access to Information Regimes

- No international instrument for FOI
- Environmental Information Regulations 2004 (from European Directive 2003/4/EC)
- Data Protection Act (from European Directive 95/46/EC)
- Open Government Code
- Local Government Access to Information Regulations
- Access to Health Records Act

What people have said about the UK's FOI regime

"The UK's Freedom of Information legislation has been a success story, providing a regime for freedom of information that is among the most open and rigorous in the world."

Ministry of Justice, 24 June 2009

"For political leaders, it's like saying to someone who is hitting you over the head with a stick, 'Hey, try this instead', and handing them a mallet."

A Journey, Tony Blair, September 2010 (on FOI being used as a weapon by journalists)

Find out more

- Access ICO guidance
- Read published decision notices
- Find out how to access public information
- and more, here:

http://www.ico.gov.uk/for_organisations/freedom_of_information.aspx

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