

Freedom of Information

Anyone has a right to request information from a public authority¹. You have two separate duties when responding to these requests:

- to tell the applicant whether you hold any information falling within the scope of their request; and
- to provide that information

You normally have 20 working days to respond to a request.

This doesn't mean you have to treat every enquiry formally as a request under the Act. It will often be most sensible and provide better customer service to deal with it as a normal customer enquiry under your usual customer service procedures, for example, if a member of the public wants to know what date the next council meeting is, or whether there are any allotment plots available.

To be valid under the Act, the request must:

- be in writing. This could be a letter or email. Requests can also be made via the web, or even on social networking sites such as Facebook or Twitter if your public authority uses these;
- include the requester's real name. The Act treats all requesters alike, so you should not normally seek to verify the requester's identity. However, you may decide to check their identity if it is clear they are using a pseudonym or if there are legitimate grounds for refusing their request and you suspect they are trying to avoid this happening, for example because their request is vexatious or repeated. Remember that a request can be made in the name of an organisation, or by one person on behalf of another, such as a solicitor on behalf of a client;
- include an address for correspondence. This need not be the person's residential or work address – it can be any address at which you can write to them, including a postal address or email address;
- describe the information requested. Any genuine attempt to describe the information will be enough to trigger the Act, even if the description is unclear, or you think it is too broad or unreasonable in some way. The Act covers information not documents, so a requester does not have to ask for a specific document

The time for compliance will not begin until you have received the necessary clarification to allow you to answer the request.

The Act only covers recorded information you hold. When compiling a response to a request for information, you may have to draw from multiple sources of information you hold, but you don't have to make up an answer or find out information from elsewhere if you don't already have the relevant information in recorded form.

Before you decide that you don't hold any recorded information, you should make sure that you have carried out adequate and properly directed searches, and that you have convincing reasons for concluding that no recorded information is held. If an applicant complains to the ICO that you haven't identified all the information you hold, we will consider the scope, quality and thoroughness of your searches and test the strength of your reasoning and conclusions.

If you don't have the information the requester has asked for, you can comply with the request by telling them this, in writing. If you know that the information is held by another public authority, you could transfer the request to them or advise the requester to redirect their request.

A requester may ask for any information that is held by a public authority. However, this does not mean you are always obliged to provide the information. In some cases, there will be a good reason why you should not make public some or all of the information requested.

You can refuse an entire request under the following circumstances:

¹ A local authority within the meaning of the Local Government Act 1972, namely—

(a) in England, a county council, a London borough council, a district council or a **parish council**,

- It would cost too much or take too much staff time to deal with the request.
- The request is vexatious.
- The request repeats a previous request from the same person.

In addition, the Freedom of Information Act contains a number of exemptions that allow you to withhold information from a requester. In some cases it will allow you to refuse to confirm or deny whether you hold information. Some exemptions relate to a particular type of information, for instance, information relating to government policy. Other exemptions are based on the harm that would arise or would be likely arise from disclosure, for example, if disclosure would be likely to prejudice a criminal investigation or prejudice someone's commercial interests.

There is also an exemption for personal data if releasing it would be contrary to the Data Protection Act.

You can automatically withhold information because an exemption applies only if the exemption is 'absolute'. This may be, for example, information you receive from the security services, which is covered by an absolute exemption. However, most exemptions are not absolute but require you to apply a public interest test. This means you must consider the public interest arguments before deciding whether to disclose the information. So you may have to disclose information in spite of an exemption, where it is in the public interest to do so.

If you are refusing all or any part of a request, you must send the requester a written refusal notice. You will need to issue a refusal notice if you are either refusing to say whether you hold information at all or confirming that information is held but refusing to release it.

GDPR

The General Data Protection Regulation (GDPR) came into effect on 25 May 2018. The Data Protection Act 1998 will be replaced in the UK with the Data Protection Act 2018.

ICO's approach to considering the disclosure of personal data under the Freedom of Information Act 2000 (FOIA) remains largely the same and our existing guidance is still of use. However, there are a few key points to consider.

- The definition of personal data and sensitive personal data have changed, as have the data protection principles and the rights of subject access.
- If the information constitutes the personal data of third parties, public authorities should consider whether disclosure would breach the data protection principles.
- The Data Protection Act 2018 amends FOIA so that the 'legitimate interests basis' is applicable to public authorities when they are considering disclosure. There is a three-part test which should be applied in the following order:
 - Purpose test – is there a legitimate interest behind the processing?
 - Necessity test – is the processing necessary for that purpose?
 - Balancing test – is the legitimate interest overridden by the individual's interests, rights or freedoms?

This means it is not sufficient for you to simply decide that it's in your legitimate interests and start processing the data. You must be able to satisfy all three parts of the test prior to commencing your processing.

More detailed information is available from:

<https://ico.org.uk/for-organisations/guide-to-freedom-of-information/what-is-the-foi-act/>