

FREEDOM OF INFORMATION ACT 2000

EXPLANATORY NOTES

THE ACT

8. The main purpose of the Act is to implement the principles set out in the White Paper in so far as it is appropriate to do so by primary legislation. Some matters will be dealt with in secondary legislation, codes of practice or by administrative action.
9. The Act:
 - provides a right of access to recorded information held by public authorities;
 - creates exemptions from the duty to disclose information; and
 - establishes the arrangements for enforcement and appeal.
10. The Act is in eight parts.

Part I: Access to information held by public authorities

11. This Part:
 - provides for the general right of access to recorded information held by public authorities and specifies the conditions which need to be fulfilled before an authority is obliged to comply with a request;
 - describes the effect of the exemptions in Part II on the obligations under section 1;
 - provides for the Act to cover the bodies, persons or office holders specified in Schedule 1 and publicly-owned companies and includes a power to specify further public authorities for the purpose of the Act;
 - allows public authorities to charge fees in accordance with regulations made by the Secretary of State;
 - provides for time limits for complying with a request;
 - makes special provision relating to public records transferred to the Public Record Office, etc.;
 - requires public authorities to provide advice and assistance to applicants;
 - requires public authorities to state the basis for refusal of a request;
 - renames the Data Protection Commissioner and Data Protection Tribunal (with consequential amendments to other legislation being made in Schedule 2); and
 - requires public authorities to adopt and maintain a publication scheme and to publish information in accordance with it.

Part II: Exempt information

12. This sets out the circumstances in which information is “exempt information” for the purposes of the Act. Some of the exemptions apply to a class of information; others rely on the application of a prejudice test or other consequences of disclosure.

Part III: General functions of Secretary of State, Lord Chancellor and Information Commissioner

13. This requires the Secretary of State to issue a code of practice providing guidance to public authorities on various administrative matters, including the practices which authorities should follow when dealing with requests for information. It also requires the Lord Chancellor to issue a code of practice providing guidance to public authorities on the keeping, management and destruction of their records.
14. Part III places a duty on the Commissioner to promote good practice and public authorities’ compliance with the Act, their publication schemes and codes of practice. The Commissioner is also obliged, where he considers it expedient, to disseminate information to the public about the Act. The Commissioner is permitted to charge fees with the consent of the Secretary of State for such services. Part III also enables the Commissioner to make practice recommendations specifying what a public authority should do to comply with the codes of practice and requires the Commissioner to lay annual reports before Parliament.

Part IV: Enforcement

15. This enables an applicant who is not satisfied with the response by a public authority to a request for information to apply to the Commissioner for a decision on whether the authority has acted in accordance with the provisions of the Act. Subject to certain conditions, for example, the exhaustion of other means of complaint, the Commissioner is under a duty to reach a decision.
16. This part of the Act also describes the investigative and enforcement powers of the Commissioner. The Commissioner’s powers of entry and inspection are set out in Schedule 3. It confirms that the Act does not give rise to any right of action against public authorities for breach of statutory duty. This part also provides for the circumstances in which a certificate may be issued by an accountable person in respect of a decision notice or enforcement notice issued by the Commissioner in respect of the disclosure of exempt information. The effect of such a certificate is that a public authority need not comply with the Commissioner’s notice.

Part V: Appeals

17. This states the circumstances in which an applicant or a public authority may appeal to the Tribunal when a decision notice, information notice, or enforcement notice has been served. It also states the circumstances in which a party to an appeal to the Tribunal can appeal to the courts on a point of law. It lays down the circumstances in which the Tribunal can hear appeals against the issue of a certificate in national security cases. It also provides for appeal procedures through amendments to the Data Protection Act 1998 as detailed in Schedule 4.

Part VI: Historical records and records in Public Record Office or Public Record Office of Northern Ireland

18. This effectively replaces the largely discretionary provision for access to public records under the Public Records Act 1958 with a new statutory regime; provides for the access to be enhanced in respect of information contained in records more than thirty years old by disapplying a number of the exemptions in Part II; regulates the relationship between the Lord Chancellor (or appropriate Minister in Northern Ireland) and public

*These notes refer to the Freedom of Information Act 2000
(c.36) which received Royal Assent on 30th November 2000*

authorities in relation to certain information contained in historical records, and makes further provision in relation to decisions relating to certain transferred public records.

Part VII: Amendments of Data Protection Act 1998

19. With some exceptions and modifications this Part extends the Data Protection Act 1998 provisions about subject access and data accuracy to all personal information held by public authorities. Schedule 6 makes specific provision to extend the 1998 Act to include relevant personal information processed by or on behalf of both Houses of Parliament and makes other minor amendments to that Act.

Part VIII: Miscellaneous and supplemental

20. This Part:
- provides for a power to make provision relating to environmental information;
 - provides for a power to repeal or amend existing statutory bars to disclosure;
 - provides for disclosure of information between the Commissioner and specified ombudsmen.
 - creates an offence of altering etc. records with intent to frustrate a right of access;
 - saves existing powers of public authorities to disclose information;
 - makes provision in respect of defamation;
 - prevents the extension of the Act to the Scottish Parliament and certain devolved bodies;
 - deals with the application of the Act to government departments and to Parliament and the Northern Ireland Assembly;
 - defines the way in which orders or regulations can be made under the Act;
 - defines various terms used in the Act; and
 - gives effect to repeals of existing legislation in Schedule 8.
21. Part VIII also sets out the commencement provisions for the Act. Those provisions in the Act which do not come into effect on, or at the end of the period of two months following, Royal Assent must be brought into force within the following five years unless brought into effect earlier by order of the Secretary of State; meanwhile, the Secretary of State must make annual reports to Parliament on progress towards full commencement.