

FREEDOM OF INFORMATION ACT 2000

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part I: Access to information held by public authorities

Right to information

Section 1: Right to information

22. *Section 1* confers a general right of access to information held by public authorities. An applicant has a right to be told whether the information requested is held by that authority (the duty to confirm or deny whether it holds information) and, if it is held, to have it communicated to him. Provisions limiting an authority's duty under section 1 appear in sections 1(3), 2, 9, 12 and 14 and in Part II. The grounds in sections 9, 12 and 14 relate to the request itself and the circumstances in which an authority is not obliged to comply with it. The provisions of Part II relate to the nature of the information requested.
23. *Subsection (3)* provides that where an authority reasonably requires further information in order to identify and locate the requested information and it requests this from the applicant, it need not comply with section 1 until the further information is supplied. There are no formal requirements on applicants to describe the information in a particular way, but the description would have to be sufficient for a public authority to be able to identify and locate the information requested. The applicant is not required to describe a particular record.
24. *Subsection (4)* provides that, although the information communicated to an applicant must be the information held at the time the request was received, account may be taken of amendments or deletions that would have been made in the normal course of events. This is intended to help ensure that requests for information under the Act do not interfere with the other day-to-day work of an authority or with sound record management.
25. *Subsection (5)* provides that where a public authority has communicated information to an applicant, the authority shall be taken to have complied also with its duty to inform the applicant whether or not it holds that information.

Section 2: Effect of the exemptions in Part II

26. This section deals with the effect of the exemptions in Part II. The effect of the provisions in Part II differs depending on whether they confer absolute exemption or not. Subsection (3) draws a distinction between provisions in Part II which confer an 'absolute exemption', where the need to balance the public interest in disclosure against the public interest in maintaining the exemption does not arise, and other exemptions whose application must be balanced against the public interest in disclosure.
27. *Subsection (1)* provides that public authorities are not under a duty to confirm or deny that they hold the requested information if either the provision of Part II which states

that the duty does not arise in relation to that information confers absolute exemption or in all the circumstances of the case, the public interest in maintaining the exclusion of the duty outweighs the public interest in disclosing whether the authority holds the information.

28. *Subsection (2)* provides that public authorities are not under a duty to disclose information if either the information is exempt by virtue of a provision conferring an absolute exemption or, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Section 3: Public authorities

29. *Subsection (1)* defines the term “public authority” for the purposes of the Act.
30. The Act is intended to have wide application across the public sector at national, regional, and local level. In view of the large number of bodies and offices intended to fall within the scope of the Act it is not feasible to list each body individually. Public authorities are, therefore, designated in one of the following ways-
- a) on the face of the Act (in Schedule 1), using generic descriptions where appropriate, which specifies the principal authorities in national and local government, together with the principal public authorities relating to the armed forces, national health service, education, the police and other public bodies and offices;
 - b) by order under section 4(1) adding to Schedule 1 any body or the holder of any office that satisfies certain specified conditions;
 - c) by order under section 5 adding any person that satisfies certain conditions and that appears to the Secretary of State to exercise functions of a public nature or is providing under a contract with a public authority any service whose provision is a function of that authority; or
 - d) by reference to the definition of a publicly-owned company in section 6.
31. *Subsection (2)* sets out the circumstances in which information is “held” by a public authority for the purposes of the Act. This does not extend to holding on behalf of another person or authority. It would not, for example, extend to a Minister’s constituency papers just because they were kept by the Minister in his Department. It includes information held elsewhere on behalf of an authority, for example in a private repository.

Section 4: Amendment of Schedule 1

32. *Subsection (1)* provides a power for the Secretary of State to make an order, which will be subject to negative procedure, to add to Schedule 1 a reference to any body or the holder of any office which is not listed and which fulfils certain conditions.
33. *Subsections (2) and (3)* list the conditions to be fulfilled before an order under subsection (1) may be made in relation to a particular body or office holder. These are that:
- any body or office to be listed is established by the Crown or by an enactment or by subordinate legislation or by a Minister in his capacity as Minister or by a government department or by the National Assembly for Wales; and
 - in the case of a body, that it is wholly or partly constituted by appointment made by the Crown or a Minister or a government department or the National Assembly for Wales; or
 - in the case of an office, that appointments are made by the Crown or a Minister or a government department or the National Assembly for Wales.

34. *Subsection (4)* provides for a body or office to cease to be a public authority by virtue of its inclusion in Part VI or VII of Schedule 1 if it ceases to satisfy the conditions in subsections (2) and (3).
35. *Subsection (5)* enables the Secretary of State to make an order to amend Parts VI and VII of Schedule 1 to remove an entry relating to a body or office which has ceased to exist (subsection (5)(a)) or which ceases to meet the conditions in subsections (2) and (3) (subsection (5)(b)). An order under subsection (5) must be laid before Parliament after being made (Section 82(4)).
36. *Subsection (7)* provides that, before making an order under subsection (1), the Secretary of State shall consult with the National Assembly for Wales if the order adds to Part II, III, IV or VI of Schedule 1 a reference to a body or office holder whose functions are exercisable only or mainly in or as regards Wales. It also provides that the Secretary of State shall consult with the First Minister and deputy First Minister in Northern Ireland if the order relates to a body which or office holder who, if the order were made, would be a Northern Ireland public authority.

Section 5: Further power to designate public authorities

37. *Subsection (1)* contains a power for the Secretary of State to make an order, subject to affirmative procedure, to include within the scope of the Act any person or office which is not described in Schedule 1 nor capable of being added to that Schedule by an order made under section 4(1) but which:
- appears to the Secretary of State to exercise functions of a public nature, or
 - is providing contractual services to a public authority where the provision of that service is one of the functions of the authority.
38. *Subsection (3)* requires the Secretary of State to consult any person in respect of whom he proposes to make an order under subsection (1).

Section 6: Publicly-owned companies

39. *Subsection (1)* defines a publicly-owned company as one which:
- is wholly owned by the Crown; or
 - is wholly owned by any public authority listed in Schedule 1 other than a government department or an authority which is listed only in relation to particular information.
40. *Subsection (2)* defines a company wholly owned by the Crown as a company having no members except:
- Ministers, government departments or companies wholly owned by the Crown; or
 - any person acting on behalf of the above,
- and defines a company wholly owned by a public authority other than a government department as having no members except:
- that public authority or companies owned by that public authority; or
 - any person acting on behalf of the above.
41. *Subsection (3)* defines company as including any body corporate.

Section 7: Public authorities to which Act has limited application

42. *Subsection (1)* provides that where a public authority is listed in Schedule 1 only in relation to specified information nothing in Parts I to V of the Act applies to any other information held by that authority.

43. *Subsection (2)* provides that an order under section 4(1) may specify that it is only to have effect with respect to particular information.
44. *Subsection (3)* enables the Secretary of State by order to amend Schedule 1 by limiting the information in relation to any public authority and by removing or amending that limitation. Such an order is subject to affirmative resolution procedure (section 82(2)(a)). *Subsection (4)* sets out with whom the Secretary of State must consult before making such an order.
45. *Subsection (5)* requires that an order made under section 5(1)(a) must specify the functions with respect to which it has effect. Nothing in Parts I to V of the Act applies to information held by an authority designated by order under section 5(1)(a) which does not relate to the specified functions.
46. *Subsection (6)* requires an order made under section 5(1)(b) to specify the services provided under contract to which the designation is to apply. Nothing in Parts I to V of the Act applies to information held by a contractor designated in such an order which does not relate to the provision of the specified services.
47. *Subsection (7)* provides that nothing in Parts I to V of the Act applies to information held by a publicly-owned company which is excluded information.
48. *Subsection (8)* defines excluded information for the proposed subsection (7) as being information specified in relation to a publicly-owned company in an order by the Secretary of State. Such an order is subject to the affirmative resolution procedure (Section 82(2)(a)).

Section 8: Request for information

49. This section lays down the conditions which must be fulfilled in order that a request for information is dealt with in accordance with the provisions of the Act. The conditions include a requirement that the applicant describes the information requested. A request for information can be made by any individual or body, regardless of the purpose of the application. An applicant will have to identify himself for the purposes of the application, but the identity of the applicant is otherwise of no concern to the authority except in the case of vexatious or repeated requests (section 14), and personal information (section 40(1) - if the applicant is the subject of the personal information, the provisions of the Data Protection Act 1998 will apply). In particular, the applicant need not be a United Kingdom national or resident.

Section 9: Fees

50. This section makes provision for authorities to notify applicants that a fee is payable and exempts authorities from being obliged to disclose information until the fee has been paid. The applicant will have three months from the date of notification to pay the fee before his request lapses. This section also provides for the Secretary of State to make regulations governing the fees that authorities may charge. Such regulations will be able to prohibit a fee with regard to certain types of request, to set an upper limit on amounts that may be charged and to prescribe the manner in which any fees are to be calculated. The regulations will not apply where provision is made under another Act as to the fee that may be charged for the provision of particular information.
51. It is proposed that the regulations governing fees will specify that up to 10% of the reasonable marginal costs of complying with the request may be charged. This will be a maximum figure and there will be no requirement on an authority to charge the full 10%, or indeed to charge anything. The regulations will provide that the additional costs involved in providing the information in the manner or form requested (disbursements) may be charged in addition to any fee.

Section 10: Time for compliance with request

52. This states that an authority must comply with its duty under section 1 promptly and in any event within 20 working days (or other period, not later than 60 working days, set under regulations) from receipt of a request. If a fees notice is issued, time stops running from the issue of the notice until the fee is received. Working days do not include any Saturday or Sunday or Christmas Day, Good Friday or bank holidays under the Banking and Financial Dealings Act 1971 in any part of the UK. Where an authority is not able to reach a decision as to the balance of the public interest in disclosure within 20 working days, it must reach a decision within a reasonable period. In these circumstances, the authority is still required to issue a notice that an exemption applies under the provisions of section 17(1) within the 20 working day limit.

Section 11: Means by which communication to be made

53. This section permits an applicant to express a preference as to the means of communication of information under section 1.
54. *Subsection (1)* provides that where the applicant expresses a preference for the communication of the information in one of 3 specified ways the public authority must provide the information in accordance with that preference so far as is reasonably practicable. The applicant is not restricted to one option but may, for example, inspect and take a copy. *Subsection (2)* provides that cost may be taken into account in considering whether it would be reasonable to comply with the applicant's wishes.
55. *Subsection (3)* requires an authority to give reasons for not complying with an applicant's expressed wishes.
56. *Subsection (4)* provides that, subject to the wishes of the applicant and cost, an authority may communicate information in any reasonable form taking the circumstances into account. Information may be provided on tape or other suitable means if considered appropriate.

Section 12: Exemption where cost of compliance exceeds appropriate limit

57. This section exempts public authorities from the obligation to disclose the information requested, if the cost of doing so exceeds a threshold prescribed by the Secretary of State. It allows the Secretary of State to prescribe different amounts for different authorities. It enables the Secretary of State to make regulations to allow authorities to aggregate the costs of requests for information where two or more requests are made by one person, or by two or more persons acting together. It also enables the Secretary of State to make regulations governing the matters to be taken into account in calculating the costs, and the manner in which they are to be estimated.

Section 13: Fees for disclosure where cost of compliance exceeds appropriate limit

58. This section provides that a public authority may charge for the communication of any information the communication of which is not required under section 1(1), because the cost of compliance exceeds the appropriate limit, and is not otherwise required by law. Such fees are to be determined by the public authority in accordance with regulations made by the Secretary of State. It enables public authorities to charge for large amounts of information that might not be otherwise disclosed due to cost considerations. This does not affect existing statutory provisions as to fees to be charged for the disclosure of information.

Section 14: Vexatious or repeated requests

59. *Subsection (1)* states that an authority is not obliged to comply with vexatious requests. This is not intended to include otherwise valid requests in which the applicant happens to take an opportunity to vent his frustration.

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

60. *Subsection (2)* states that an authority does not have to comply with repeated or substantially similar requests from the same person other than at reasonable intervals.

Section 15: Special provisions relating to public records transferred to Public Record Office, etc.

61. This section addresses the situation where the appropriate records authority (for example, the Public Record Office) receives a request for information which is (or which, if it existed, would be) contained in a transferred public record and the duty to confirm or deny does not arise in relation to that information or the information is exempt only by virtue of a provision in Part II which is not specified as conferring absolute exemption in section 2(3). In such cases the appropriate records authority will send a copy of the request to the responsible authority (generally, that will be the public authority that transferred the information to the appropriate records authority) within the time period allowed for compliance with section 1(1).
62. *Subsection (3)* provides that the responsible authority shall reply to the appropriate records authority, within a reasonable time, giving their decision as to the balance of the public interest, in respect of either the duty to confirm or deny or to disclose the information (as relevant), as required by section 66(3) or (4).
63. *Subsection (4)* defines 'transferred public record' for the purposes of the Act as a public record that has been transferred to the Public Record Office, another place of deposit appointed by the Lord Chancellor under the Public Records Act 1958, or the Public Record Office of Northern Ireland.
64. *Subsection (5)* defines for the purposes of the Act 'appropriate records authority' and 'responsible authority' in relation to a transferred public record.

Section 16: Duty to provide advice and assistance

65. This section places a duty on authorities to provide advice and assistance to applicants or would-be applicants for information. An authority is deemed to have complied with this duty with respect to any request for information if it has conformed with the Secretary of State's code of practice issued under section 45 in relation to that case.