

# PROTECTION OF FREEDOMS ACT 2012

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## EXPLANATORY NOTES

### BACKGROUND

#### Part 6: Freedom of information and data protection

61. The Programme for Government (section 3: civil liberties and section 16: government transparency) states that the Government will: “*extend the scope of the Freedom of Information Act to provide greater transparency*”; “*create a new ‘right to data’ so that government-held datasets can be requested and used by the public, and then published on a regular basis*”; and “*ensure that all data published by public bodies is published in an open and standardised format, so that it can be used easily and with minimal cost by third parties*”.
62. The Office of Information Commissioner was created in January 2005 on the coming into force of the Freedom of Information Act 2000 (“FOIA”). The Information Commissioner’s role absorbed that of the Data Protection Registrar, first established by section 3 of the Data Protection Act 1984 (“the 1984 Act”); the 1984 Act was repealed by the Data Protection Act 1998 (“DPA”), section 6 of which provided for the continuation of the Data Protection Registrar’s office under the new name of “the office of the Data Protection Commissioner”. The Information Commissioner is the independent regulator for information rights in the UK and has responsibility for the oversight of both the DPA and FOIA. The Commissioner also has responsibility for the Environmental Information Regulations 2004 ([SI 2004/3391](#)), which implement Directive [2003/4/EC](#) of the European Parliament and of the Council of 28 January 2003 on public access to environmental information, and the Privacy and Electronic Communications Regulations 2003 ([SI 2003/2426](#)), which implement Directive [2002/58/EC](#) of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector.
63. The Information Commissioner’s Office (“ICO”) is an executive Non-Departmental Public Body sponsored by the Ministry of Justice. The Commissioner is appointed as a corporation sole by Her Majesty by letters patent on the recommendation of the Prime Minister, who is advised by the Secretary of State for Justice following a selection process undertaken by the Ministry of Justice and validated by the Office of the Commissioner for Public Appointments. The current Commissioner, Christopher Graham, took up his five year appointment in June 2009.
64. The provisions in the DPA and FOIA cover the Commissioner’s appointment, remuneration and funding, appointment of staff and officers of the ICO, accountability and the Commissioner’s functions. Although the Commissioner operates independently in the exercise of his or her statutory functions, some issues require the approval of the Secretary of State such as funding, the level of certain fees charged by the ICO and the issue of codes of practice.
65. The FOIA confers a general right of access to information held by over 100,000 public authorities in the UK. Once a person makes an application, the public authority has 20 working days to respond to the request or notify the individual making the request

*These notes refer to the Protection of Freedoms Act  
2012 (c.9) which received Royal Assent on 1 May 2012*

why the information required is exempt. The Act recognises that there will be valid reasons why some kinds of information may be withheld, such as if its release would prejudice national security or legitimate commercial confidentiality. Public authorities can also refuse a freedom of information request if collating the information would incur disproportionate costs.

66. All public authorities, and companies wholly owned by a single public authority, have obligations under the FOIA and the Information Commissioner is responsible for issuing guidance on set procedures for responding to requests. The Commissioner also receives complaints about public authorities' conduct of their responsibilities. After investigation the Information Commissioner makes a final assessment as to whether or not the relevant public authority has complied with the Act. Enforcement action may be taken against public authorities that repeatedly fail to meet their responsibilities under the Act.
67. The FOIA makes no express provision in respect of datasets. The Government's proposals to make available Government data were set out in a letter, dated 31 May 2010, from the Prime Minister to Departments<sup>1</sup>. Government datasets are available at: [www.data.gov.uk](http://www.data.gov.uk).
68. The Government's proposals for extending the scope of the FOIA were announced on 7 January 2011<sup>2</sup>.

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<sup>1</sup> Letter to Government departments on opening up data | [Number10.gov.uk](http://Number10.gov.uk)

<sup>2</sup> [Opening up public bodies to public scrutiny - Ministry of Justice](#)