

Making a Freedom of Information Request

Members of the public are entitled to request certain information from public authorities. The Freedom of Information Act 2000 (**FOIA**) enables both individuals and organisations to make Freedom of Information (FOI) Requests. The FOIA recognises that people have a right to know about the activities of public authorities, unless there is a good reason why this should not be the case.

What information can a FOI Request cover?

The FOIA gives anyone the right to request information held by certain public sector bodies including most government departments and other public bodies, local councils, schools, colleges and universities, publicly owned companies, publicly funded museums and the police. A full list of organisations covered by the FOIA is included at its Schedule 1 and available online at: <https://www.legislation.gov.uk/ukpga/2000/36/schedule/1>

You can ask if certain information exists and for it to be provided to you. This only relates to 'recorded' information, such as electronic or handwritten documents, emails, notes, recordings of telephone conversations and CCTV recordings. You are not entitled to information that is not currently a 'recorded' and the public body is not required to create any new documents in response to a FOI request if none currently exist.

Who can make a FOI Request?

Anyone can request the information – this applies to both individuals and organisation. There are no restrictions on the nationality, age or location of the person requesting the information.

When making a request, you don't need to say why you want the information. However, 'vexatious' requests can be refused. These are discussed in more detail below.

How to make a FOI Request

FOI Requests must be submitted in writing to the relevant public body. The websites of most public bodies contain information how FOI Requests should be submitted. There is usually an

online form to complete or you can write to the public body by email or post. It is also worth checking the website to see if the public body has already published the information sought.

You should provide your name (or your organisation's name), your contact information for the response and a detailed description of the information requested. While there are no specific rules for a FOI Request, you should be as clear and specific as possible about the information that you want rather than asking general questions.

You should also say how you would like the information requested to be provided e.g. electronic or paper copies, audio format or large print.

What will it cost?

It doesn't cost anything to make a FOI Requests but you may be charged a small copying and postage fee if you ask for paper copies.

When should you receive a response?

The public body should respond within 20 days of your request. However, they might not provide a full answer in that first response. There are a number of potential responses from the public body, they may:

- provide the information requested;
- tell you if it doesn't have the information requested;
- tell you that another authority holds the information or transfer your request to that other authority on your behalf;
- say that it has the information and offer to provide it if you pay a copying fee;
- refuse to give you the information and explain why (see further below); or,
- say that it needs more time to consider the request and tell you when to expect a response.
 - Note: The date provided for their further response should not be later than 40 working days after the date of your request. The public body can only extend the time limit in certain circumstances, and it must explain why it thinks it might not be able to provide the information requested.

On what grounds can a FOI Request be refused?

The FOIA identifies certain categories of information which are exempt from disclosure, either because the information is sensitive or because harm would or would be likely to arise from its disclosure.

Some of the exemptions are absolute. This means that, if they apply, the public body can always refuse to provide the requested information. Common 'absolute' exemptions include where:

- the information is already accessible to the requester.
- the information relates to matters of security (such as security bodies and national security).
- the information would infringe parliamentary privilege, national law or EU law if provided, or would constitute contempt of court.
- the information is personal information, which, if disclosed, would be contrary to the Data Protection Act 1998 (DPA 1998).

There is a second, 'qualified', set of exemptions. Where these apply the public body doesn't have an automatic right to withhold the information so there must be a good reason for refusing your request. The key question for the public body is whether the public interest in withholding the information requested outweighs the public interest in its disclosure. The general principle is that disclosure is to the world at large so when considering if an exemption applies the public body will focus on the effects of disclosing the information to the wider public.

Some of the key qualified exemptions are where:

- the information is likely to prejudice someone's **commercial interests**. It applies to the commercial interests of an individual, company, the public body itself or any other legal entity;
- the information is likely to prejudice **international relations**;
- the information is likely to prejudice the **economy**;
- the information is likely to prejudice the **financial interests of the government administrations**;

- the information is likely to prejudice the **formulation of government policy** or to prejudice the **effective conduct of public affairs** (e.g. if it concerns the formulation or development of government policy, communications between ministers, advice from law officers or the operation of any ministerial private office);
- the information is likely to endanger anyone's **physical or mental health or safety**; or,
- the information is likely to reveal information that is subject to 'legal professional privilege'.

There are other relevant bases on which requests can be refused:

- **“Vexatious” requests** – Public bodies don't have to comply with requests submitted to annoy or frustrate, rather than a legitimate enquiry.
- **Cost** - if it would cost more than £600 for central government or £450 for other public bodies to find and extract the information.
- **Repeat** – if the request repeats a previous request from the same person.

Can you complain about a FOI decision?

The first step for making a complaint about the handling, response, or refusal of a FOI Request should be with the public body to which the initial request was made. Usually a public body's response to a FOI Request will contain details of how to complain. If it doesn't, you should write to them in the same way as the original request, noting that you are now making a formal complaint.

The public body will then carry out an 'internal review' into the handling of your FOI Request. This should take no longer than 20 working days in most cases, or 40 working days in exceptional cases. The public body will write to you with the outcome of their review.

If the request is refused again you can raise a complaint with the Information Commissioner's Office (the **ICO**). The ICO has a complaint form on its website for this purpose (<https://ico.org.uk/media/report-a-concern/forms/1477/access-official-information-form.pdf>). The ICO has a general duty to investigate complaints from members of the public who believe that a public authority has failed to respond correctly to an FOI Request. You should raise your concern to the ICO within three months of your last meaningful contact with the public body, as they may

not investigate older cases. The ICO attempts to resolve all complaints made to it within six months.

If the FOI request is still refused following the ICO's review, and you wish to pursue the matter, you can appeal the ICO's decision to the First Tier Tribunal. Any appeal must be brought within **28 days** of the date of the ICO's decision. However, if you miss the time limit, you can ask for more time to appeal. There is no guarantee the Tribunal will accept your request and so every effort should be made to appeal *in time*. You can explain why you're late, and the tribunal will decide if it can still accept your case. The appeal form ([available here](#)) should be sent to the tribunal office no later than 28 days after the date the ICO sent you its decision. You must explain why you think the ICO decision is wrong in law (eg the ICO did not give adequate reasons for its decision) and state the outcome you are seeking. This can be complex and difficult and we would advise seeking further legal representation from a public lawyer should you wish to appeal a decision on the basis that it is 'wrong in law'.