

GUIDE TO USING THE FREEDOM OF INFORMATION (FOI) ACT

Introduction

This guide sets out the key steps for using the Freedom of Information Act to obtain information from government and public authorities. This guide will explore what is covered by the Act, how branches can use the Act, obligations of public authorities under the Act and contains a model FOI letter for branches to use.

What is the Freedom of Information Act?

The Freedom of Information Act came into full force on 1 Jan 2005 and gives the public the right to obtain information from public authorities. The Act applies to more than 100,000 public bodies in England, Wales and Northern Ireland (Scotland has its own legislation).

There are two Acts which cover the four countries of the United Kingdom:

- The Freedom of Information Act 2000 (the UK act) which covers the whole of the UK except Scotland.
- The Freedom of Information (Scotland) Act 2002 which just covers Scotland and has more power than the UK act and covers Scottish Executive, Scottish public bodies and the Scottish Government.

The main principle of the legislation is that it gives general right of access to recorded information held by government and public bodies subject to the Act and requires those bodies to respond to the request within 20 working days. An applicant does not need to give a reason for wanting the information and all requests for information must be treated equally (except under some circumstances relating to vexatious requests, which we will cover later in this guide).

Who can you get the information from?

The Freedom of Information Act (UK) applies to a whole range of public authorities including:

- Central government departments and agencies
- House of Parliament, devolved assemblies
- Local authorities
- NHS bodies including CSU's, CCG's, GPs, dentists, opticians and pharmacists
- Schools (including free schools and academies), further education colleges and universities
- The police, fire and ambulance services
- The armed forces
- Publicly owned companies – such as Arms Length Management Organisations (ALMOs)
- The BBC and Channel 4
- Museums

- The Scottish Act applies to the Scottish Executive and its agencies and the Scottish Parliament

Other Sources of information:

Non-public companies are not covered by the Act, however these companies may have links with a public body or regulator who holds information on them and who is subject to the act which can give you important information. For example trade unions are a non-public body but they report to the certification office which is a regulatory body which is covered by the Act.



Many public authorities have to comply with statutory requirements imposed on them by regulatory bodies such as OFSTED, health and safety executive or the environment agency. A list of all UK and Scotland departments, agencies, regulators and public bodies can be found [here](#).

Regulators are subject to the Act so you can ask them under the act for information relating to:

- Information from inspections
- The results of an investigation into accidents
- Correspondence or minutes of meetings from your authority
- Information about complaints / accidents at a particular workplace

Information held on behalf of a public authority

Information which someone holds on behalf of the authority is also covered. Requests should be sent to the public authority. Individual private contractors providing services on behalf of a public authority can be brought under the UK or Scottish Act. This could include information a contractor holds about its performance under a contract with an authority.

Information held on a public authority's premises on behalf of someone other than the authority is not covered by the act. Courts and tribunals, the security and intelligence services and the Royal Family are excluded from the Act, although the Scottish Act does allow for other bodies with roles in the justice system to be included in the Act, for example, the Scottish courts service who administer most Scottish courts.

Freedom of Information Acts – how to use them:

How to make a request

A request for information under the Freedom of Information Act must be made in writing – this can be a letter or an email (see model letter in appendix 1). It can also be made through established campaign sites such as [What Do They Know](#), and social media sites like Facebook and Twitter (if the public authority uses them). Under the Scottish act you can make the request in an audio form or on a video tape. A request to a Scottish authority can also be made on a voicemail, however it is strongly recommended to submit the request in writing in order to have documented evidence of the date a request was submitted. This can be used to hold the public body to account if they do not reply by the deadline. For more information the [Campaign for Freedom of Information](#) has some really detailed guidance and advice on their website.

Who to send the request to

From experience we have found that you receive a better response rate from a Freedom of Information request if you send it directly to the FOI officer rather than to a generic email address for that public body or to the chief executive. A list of every public body, contact officer for FOI requests and their email address can be found [here](#). If that is not possible then all public bodies have a 'contact' email and address listed on their website.

What should my freedom of information request say?

A legal requirement of the FOI Act is that on your written request you include your name and address (the address can be an email address) and include a phone number on your correspondence, as from previous FOI requests we have found that some local authorities may wish to get in contact with you to clarify the questions on the request or talk you through the reply.

When you write your request you 'should' say that you are applying under the FOI Act – but even if you fail to mention the act it is still valid.

The more precise your question the better results you receive back from freedom of information requests. Public authorities only hold specific direct information and may refuse to answer any questions that are statements or opinions.

If you want copies of specific documents including minutes of meetings you can request those including reports and accounts. You may also request correspondence emails between the authority and someone else over a time period.

You can ask for all the information the public authority has on a specific topic, but this should be 'narrowly defined' as asking for 'everything' could be too big a request and mean a massive amount of work which results in a cost.

Remember you do not have to say on the request why you want the information or what it will be used for!

Timescales

The public authority has 20 working days to respond to your request. The authority must then respond with the information you have requested or respond and explain why it cannot supply the information you have requested. Depending on the request an extension may be requested especially when a public authority is required to consider exempt information under the Act's public interest test (see below). The 20 working days can then be extended for a "reasonable" time, however if the public authority needs an extension they are required to tell you how long this likely to be.

For schools the norm is "20 school days" to reply, however schools can have an extension of up to 60 working days under the UK act to respond to freedom of information requests received during or before the school holidays. This extension does not apply in Scotland.

Will I be charged for the information?

For a majority of FOI requests there is no charge. If the FOI request is likely to require a lot of work there may be a charge, but this varies by public authority. If an authority decides to charge they must contact you and tell you the amount and what the charge is for (e.g. photocopies). Once they have contacted you with the charge amount the 20 working day response period is suspended until the charge is paid. There is a cost limit written into the FOI Act and a public authority can only charge for printing, photocopying and postage. The cost limit for a government department is £600 – this equates to 3.5 days work at a fixed rate of £25 an hour. The cost limit for all other public bodies is £450 – this equates to 2.5 days of work at the same rate. If the cost to answer your FOI request is above these costs, the public authority is not required under the law to provide the information.

UNISON – Case Study – Freedom of Information Request (The Living Wage) – Oct 2015

In 2015 UNISON's bargaining support unit embarked on a comprehensive freedom of information request exercise which covered every NHS trust, local government council / authority, university, FE college and 6th form college across the UK. The Freedom of Information request looked to identify which local employers were paying their staff at least the Living Wage to their lowest paid directly employed staff. Here are some of the lessons we learnt from this exercise:

Plan well with a timeline

The exercise took approximately 3 months to complete – this included a follow-up email to all the public authorities that did not respond to the first FOI and took into account some requests for extensions.

Ask precise questions

The Living Wage FOI request asked precise questions about if the public body paid the Living Wage to the lowest paid, however in the request whilst trying to gauge their view on the Living Wage there was a question that was worded as a statement or opinion that many authorities did not to answer.

Response rate

Despite using the act there were public bodies that did not respond to the FOI request and overall there was a 76% response rate. The highest responder was Local Government with 93% response rate and the lowest was 6th form colleges with a 41% response rate. This was mainly due to the request being sent to 'generic email addresses', it is always better to send the request directly to the FOI officer and the FOI directory should help assist with that.

Using an electronic survey to collect responses

Although most branches will not be sending out as many FOI requests as this exercise in an attempt to make it easier for authorities to reply to the request we included an on-line link to the questions. This would have allowed the recipient to input the answers (directly into surveymonkey), however we found that most public bodies did not use this link and instead preferred to email back their answers in order to keep a paper-trail with dates from the original request. Therefore, if the branch is planning on sending out lots of FOI's it might be worth considering setting up a dedicated email address to receive all the replies and acknowledgements.

Speak to Bargaining Support

If your branch is planning on sending out multiple FOI requests please email [Bargaining Support](#) – we may be able to assist the branch.

What type of information can you obtain through the Act?

The information includes paper records, emails, information stored on a computer, audio and video films, maps, photographs, or any other form of recorded information.

Do public authorities publish their information under the Act?

All public authorities have to publish information they have received under the Act under a publication scheme on their website. It acts as a log of requests and details the type of requests that have been made and if any charges were made for the request.

Due to the timescales involved with applying for information under the FOI Act it is worth branches looking at these publication schemes before they make the request, as the request could cover something that has already been published. If this is the case you can ask for the information to be supplied to you (usually within a few days).

What information can be refused?

There are approximately 24 exemptions to the general right of access of information – the reasons are very technical but the main reasons for refusing to supply information are:

- It would cost too much or take too much staff time to deal with the request
- The request is vexatious – organisations should not be taking into account who is requesting the information and what they might be using it for, however there have been cases where the FOI Act has been abused. A request can be denied on the basis that it is vexatious.
- The request repeats a previous request
- An exemption – Exemptions are contained in part 2 of the Act and are there to protect information that should not be disclosed or would not be in the public interest to disclose. The information commissioner's office has published in-depth information regarding the public interest test which can be found [here](#).
- Commercial Interests – information is exempt if its disclosure would be likely to prejudice commercial interests
- Personal Information – If the request contains personal information about an identifiable individual as it would breach the Data Protection Act.
- Investigations and legal action – Information held by the police or bodies like the Health and Safety Executive, which can bring prosecutions, are exempt if the information has been obtained during an investigation; as it could be argued that the information is potential evidence.
- Legal advice – legal advice obtained by any public body is normally exempt.
- Danger to Health and Safety – Information whose disclosure would be likely to endanger an individual's health and safety is exempt or subject to the public interest test.
- Already available – Information which is due to be published by a public body on a certain date is exempt under the UK act.

What is a vexatious request under the Act?

This is where you are allowed to take into account the context, history and identity of the requester, but the organisation would need to prove that the request (not the requester) is causing a disproportionate level of distress and disruption.

The Campaign for Freedom of Information says a vexatious request is 'if it is made in order to disrupt the authority's work or is part of an obsessive pattern of requests'.

The Information Commissioner states 'the key question to ask yourself is whether the request is likely to cause a disproportionate or unjustifiable level of distress, disruption or irritation' – if this is the case then it is likely to be refused.

Bear in mind that it is the request that is considered vexatious, not the requester. If after having a request refused as vexatious you send in a subsequent request, it can only be refused if it also meets the criteria for being vexatious.

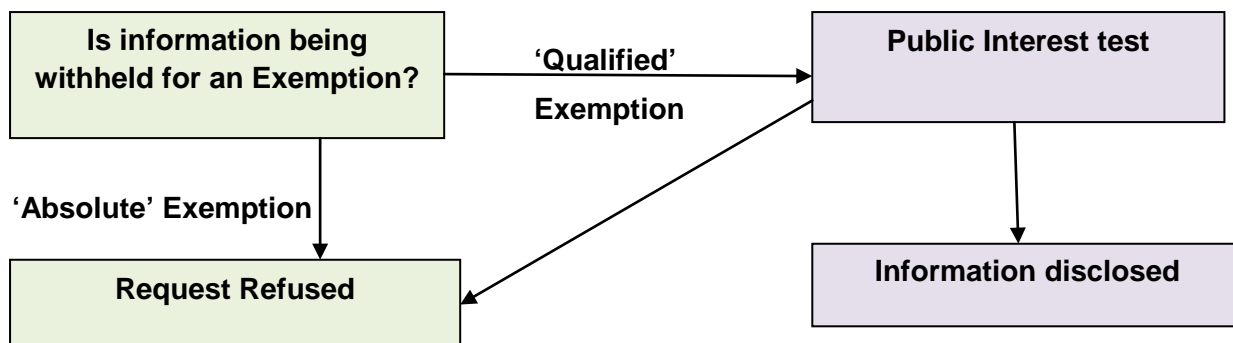
Key Indicators that a request is vexatious

- Abusive or aggressive language used in the request – the tone of the request goes beyond mere criticism
- Burden on the authority - The effort required to meet the request will be so grossly oppressive in terms of the strain on time and resources, that the authority cannot reasonably be expected to comply
- Personal grudges - For whatever reason, the requester is targeting their correspondence towards a particular employee
- Unreasonable persistence - The requester is attempting to reopen an issue which has already been comprehensively addressed by the public
- Unfounded accusations - The request makes completely unsubstantiated accusations against the public authority or specific employees.
- Deliberate intention to cause annoyance - The requester has explicitly stated that it is their intention to cause disruption to the public authority, or is a member of a campaign group whose stated aim is to disrupt the authority.

Source: Information Commissioner / Campaign for Freedom of Information

What is the public interest test (PIT)?

Exemptions under the Act are 'absolute' or 'qualified' - If an 'absolute' exemption applies the information does not have to be released. If the exemption is 'qualified', the public authority must weigh up the public interest (public good) in its disclosure. A public authority must consider the balance of public interest of disclosing the information from the request.



Who decides what is an exception and can I appeal?

The public authority will decide if the information that has been requested is exempt or disclosure is in the public interest, however you can challenge these decisions. The public authority will need to put in writing under what exemption it is withholding the information and your right to appeal. If there is no appeals process you may go directly to the UK Information Commissioner or the Scottish Information Commission will then make the decision on these requests.

In a majority of cases there is an established appeals procedure and the first stage should be to go directly back to the public authority asking them to reconsider their decision and then to the Information Commissioner. Further information on the appeal procedure can be found [here](#).

What are the Environmental Information Regulations (EIR)?

The Environmental Information Regulations fall under a European Union directive and you should use these regulations instead of the FOI Act if you wish to know environmental information including:

- Air, water and land quality, landscape, natural sites and living organisms (including genetically modified organisms);
- Substances, energy, noise, waste, emissions in the air and radiation released into the environment and in the workplace;
- Measures and activities which are likely to affect the environment, whether or not they are intended to. This means that information on planning, road building and transport are covered by this act;
- Health and Safety implications of all the above on human health, food safety, buildings and people's living conditions.

The EIRs would also apply to chemicals or agents in the workplace, diseases which people working in hospitals and laboratories might be exposed to and local authority food hygiene inspections.

Contractors working for a public authority that affects the environment will be subject to the EIRs. You can ask a contractor directly for environmental information about the contract this includes:

- Dealing with domestic or industrial waste for a local authority;
- Disposing of clinical waste for an NHS body;
- Dealing with other environment, transport and planning of energy issues

Requests under EIR regulations can be made in writing, in person or a request can be oral.

Other Sources of Information:

Here are some other avenues branches and union representative can go down to obtain information they need, without the need to use the Freedom of Information Act.

Union recognition

The freedom of information act is a useful tool used by campaigners that can be used strategically to obtain information from an employer, however if UNISON has a recognition agreement with an employer the branch has existing rights and access to a wide range of information.

Bargaining Support

In addition UNISON's bargaining support unit also has access to financial and contract information for a majority of public authorities and private companies across the UK, which may resolve an issue without the need to submit an FOI request.

Public Authority Publication Logs

As discussed previously in this guide every public authority must issue a 'publication scheme' where they disclose their responses to earlier FOI requests on their websites – it may be worth branches looking at these publication logs, as there may already be a response on the subject.

Information and consultation of employees regulations (ICE)

Under the Information and Consultation of Employees Regulations 2004 employee representatives including trade unions have the right to be informed and consulted if an ICE body has been set up. The 'standard provisions' say employees or their representatives should be:

- Informed about the organisation's finances
- Consulted – about employment prospects
- Informed and consulted about decisions likely to lead to organisational change.

Redundancies and transfers

Under the Trade Union and Labour Relations (Consolidation) Act 1992 unions (or where there is no trade union recognition – workers reps) have the right to be informed and consulted where collective redundancies are planned. For more advice and information on collective redundancies see our factsheet.

Health and Safety

Union safety representatives must be informed and consulted on health and safety matters under the Safety Reps and Safety Committee Regs (SRSCR) 19777 and Health and Safety (Consultation with Employees) Regs (HSCER) 1996.

Pensions

Draft regulations under the Pensions Act 2004 means the employer has a duty to consult on changes that would affect the pension scheme – the duty to consult only covers employers with over 50 employees.

Local authority meetings

The public can attend a wide variety of local authority committees and sub-committees under the Local Government (Access to Information) Act 1985. A majority of local authority papers are now published on-line including agendas and minutes of meetings and within these documents they should show where key decisions are taken.

European Works Councils

Under the Transnational Information and Consultation of Employees Regulations 1999 where a European Works Council exists workers representatives should be informed and consulted on matters relating to operations spanning more than one EU country. This includes the business structure and economic situation, trends of employment and investment, introduction of new working methods, transfers of production, closures and mergers and collective redundancies.

Company reports

The Companies Act 1985 requires companies employing more than 250 people to publish information on their communication to employees, consultation with employees and details on any shared ownership provisions within the company. Many private companies publish their annual reports and accounts on their websites, which can contain lots of useful information. UNISON's bargaining support unit has access to the financial accounts of a majority of companies and can email branches this information.

Appendix 1 - Model Letter

Your name and address

Name and address of public authority

Date

Dear FOI Officer,

This is a request under the Freedom of Information Act / Environmental Information Regulations (delete as applicable).

Could you please supply me with the following information...

Please could you include copies of material which you hold in the form of paper and electronic records including emails.

I would be grateful if you would supply this information in the form of photocopies / by email / by allowing me to inspect the records / etc (delete as applicable).

If I can help to clarify this request please telephone me on (your phone number) or contact me by email at (your email address)

Yours sincerely

(Your name)