

Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part I of the Freedom of Information Act 2000

Issued under section 45 of the Act.

November 2004

Presented to Parliament by the Secretary of State for Constitutional Affairs pursuant to section 45(5) of the Freedom of Information Act 2000

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Foreword

Introduction

1. The Code of Practice, to which this is a foreword, fulfils the duty of the Secretary of State set out in [section 45](#) of the Freedom of Information Act 2000, to provide guidance to public authorities as to the practice which it would, in his opinion, be desirable for them to follow in connection with the discharge of their functions under Part I of the Act. It is envisaged that Regulations to be made with respect to environmental information will make provision for the issue by the Secretary of State of a Code of Practice applying to the discharge of authorities' functions under those Regulations.
2. This foreword does not form part of the Code itself.
3. The Government is committed to greater openness in the public sector. The Freedom of Information Act will further this aim by helping to

transform the culture of the public sector to one of greater openness, enabling members of the public to better understand the decisions of public authorities, and ensuring that services provided by the public sector are seen to be efficiently and properly delivered. Conformity with the Code will assist this.

4. The aims of the Code are to:

- facilitate the disclosure of information under the Act by setting out good administrative practice that it is desirable for public authorities to follow when handling requests for information, including, where appropriate, the transfer of a request to a different authority;
- protect the interests of applicants by setting out standards for the provision of advice which it would be good practice to make available to them and to encourage the development of effective means of complaining about decisions taken under the Act;
- facilitate consideration by public authorities of the interests of third parties who may be affected by any decision to disclose information, by setting standards for consultation; and
- promote consideration by public authorities of the implications for Freedom of Information before agreeing to confidentiality provisions in contracts and accepting information in confidence from a third party more generally.

Role of the Information Commissioner

5. The Information Commissioner has a duty under [section 47](#) of the Act to promote the following of good practice by public authorities, and in particular to promote observance of the requirements of the Act and of the provisions of this Code of Practice. The Act confers a number of powers on him to enable him to carry out that duty specifically in relation to the Code.

Practice Recommendations

6. If it appears to the Commissioner that the practice of a public authority in relation to the exercise of its functions under the Act does not conform with that proposed in this Code of Practice, he may give to the authority a recommendation, under [section 48](#) (known as a "practice recommendation"), specifying the steps which should, in his opinion, be taken for promoting such conformity.
7. A practice recommendation must be given in writing and must refer to the particular provisions of the Code of Practice with which, in the Commissioner's opinion, the public authority's practice does not conform. A practice recommendation is simply a recommendation and cannot be directly enforced by the Information Commissioner. However, a failure to comply with a practice recommendation may lead to a failure to comply with the Act. Further, a failure to take account of a practice recommendation may lead to an adverse comment in a report to Parliament by the Commissioner.

8. It should be noted that because the provisions of the Act relating to the general right of access will not be brought into force until 1 January 2005, the Commissioner's powers to issue practice recommendations in relation to the handling of individual requests for information under the general rights of access will not take effect before that date.

Decision and Enforcement Notices

9. The Commissioner may also refer to non-compliance with the Code in decision notices issued as a result of a complaint under s.50 of the Act and enforcement notices issued under s.52 of the Act where, irrespective of any complaints that may have been received, the Commissioner considers that a public authority has failed to comply with any requirement of Part 1 of the Act. Where relevant, the Commissioner will make reference to the specific provisions of the Code in specifying the steps to be taken to ensure compliance with the Act.

Information Notices

10. If the Information Commissioner reasonably requires any information for the purpose of determining whether the practice of a public authority conforms to the Code, under [section 51](#) of the Act he may serve an "information notice" on the authority, requiring it to provide specified information relating to its conformity with the Code.

Compliance with notices

11. Under the provisions of [section 54](#) of the Act, if a public authority fails to comply with a decisions, information or enforcement notice, the Commissioner may certify in writing to the court that the public authority has failed to comply with that notice. The court may then inquire into the matter and, after hearing any witnesses who may be produced against or on behalf of, the public authority, and after hearing any statement that may be offered in defence, deal with the authority as if it had committed a contempt of court.

Part I of the Freedom of Information Act

12. The Code provides guidance on good practice for public authorities in connection with the discharge of their functions under Part I of the Act. The main features of Part I [Freedom of Information Act 2000](#) are:

- general rights of access in relation to recorded information held by public authorities, subject to certain conditions and exemptions;
- in cases where access to information is refused in reliance on an exemption from disclosure, a duty on public authorities to give reasons for that refusal;
- a duty to provide reasonable advice and assistance to applicants approaching public authorities seeking information;

- a duty on every public authority to adopt and maintain a publication scheme, approved by the Commissioner, which relates to the publication of information by the authority, and to publish information in accordance with the scheme (an authority may adopt a model publication scheme approved by the Commissioner).

Duty to provide advice and assistance

13. [Section 16](#) of the Act places a duty on public authorities to provide reasonable advice and assistance to applicants. A public authority is to be taken to have complied with this duty in any particular case if it has conformed with the provisions of this Code in relation to the provision of advice and assistance in that case. The duty to assist and advise is enforceable by the Information Commissioner. If a public authority fails in its statutory duty, the Commissioner may issue a decision notice under [section 50](#), or an enforcement notice under [section 52](#).
14. Public authorities should not forget that other Acts of Parliament may be relevant to the way in which authorities provide advice and assistance to applicants or potential applicants, e.g. the [Disability Discrimination Act 1995](#) and the [Race Relations Act 1976 \(as amended by the Race Relations \(Amendment\) Act 2000\)](#).

Procedures and Training

15. All communications in writing to a public authority, including those transmitted by electronic means, may contain or amount to requests for information within the meaning of the Act, and so must be dealt with in accordance with the provisions of the Act. While in many cases such requests will be dealt with in the course of normal business, it is essential that public authorities dealing with correspondence, or which otherwise may be required to provide information, have in place procedures for taking decisions at appropriate levels, and ensure that sufficient staff are familiar with the requirements of the Act and the Codes of Practice issued under its provisions. Staff dealing with correspondence should also take account of any relevant guidance on good practice issued by the Commissioner. Authorities should ensure that proper training is provided in this regard. Larger authorities should ensure that they have a central core of staff with particular expertise in Freedom of Information who can provide expert advice to other members of staff as needed.
16. In planning and delivering training authorities should be aware of other provisions affecting the disclosure of information such as Environmental Information Regulations and the Data Protection Act 1998.

Further Guidance

17. The DCA has produced a suite of guidance which provides advice for public authorities in order to help them fulfil their obligations under the Freedom of Information Act. Of particular relevance to authorities will be the Guidance on Processing Requests, which provides detailed

advice on handling requests for information. The suite of guidance also includes detailed guidance on the application of exemptions. This should be referred to for further guidance on the factors which should be taken into account when considering whether exemptions apply.

18. The Information Commissioner's Office have also issued 'Awareness Guides' on its web-site. Again, these Awareness Guides provide detailed, practical guidance on best practice which should be followed by public authorities. The Commissioner will also publish the internal advice developed for use by complaint caseworkers and summaries of complaint cases considered by the Commissioner and the Tribunal.
19. More specialist advice on the Act is also available from representative bodies (for instance the Local Government Association and the Association of Chief Police Officers) and by Government Departments for small public authorities falling within their general policy areas (for instance the DfES for schools.)

CODE OF PRACTICE

(Freedom of Information Act 2000, section 45)

Guidance to public authorities as to the practice which it would be desirable for them to follow in connection with the discharge of their functions under Part I of the Freedom of Information Act 2000

Having consulted the Information Commissioner, this Code of Practice is issued by the Secretary of State for Constitutional Affairs under section 45 of the Freedom of Information Act 2000 (c.36) on 25 November 2004. The Code provides guidance to public authorities, as defined in the Act, as to the practice which it would, in the Secretary of State's opinion, be desirable for them to follow in connection with the discharge of their functions under Part I of the Act.

Laid before Parliament on 25 November 2004 pursuant to section 45(5) of the Freedom of Information Act 2000.

I Introduction

1. This Code of Practice provides guidance to public authorities as to the practice which it would, in the opinion of the Secretary of State for Constitutional Affairs, be desirable for them to follow in connection with the discharge of their functions under Part I (Access to information held by public authorities) of the Freedom of Information Act 2000 ("the Act").
 2. Words and expressions used in this Code have the same meaning as the same words and expressions used in the Act.
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II The provision of advice and assistance to persons making requests for information

3. The following paragraphs of this Code apply in relation to the provision of advice and assistance to persons who propose to make, or have made, requests for information to public authorities. They are intended to provide guidance to public authorities as to the practice which it would be desirable for them to follow in the discharge of their duty under section 16 of the Act.

Advice and assistance to those proposing to make requests:

4. Public authorities should publish their procedures for dealing with requests for information. Consideration should be given to including in these procedures a statement of:
 - what the public authority's usual procedure will be where it does not hold the information requested (see also III - "[Transferring requests for information](#)"), and
 - when the public authority may need to consult other public authorities and/or third parties in order to reach a decision on whether the requested information can be released (see also IV - "[Consultation with third parties](#)"),
5. The procedures should include an address or addresses (including an e-mail address where possible) to which applicants may direct requests for information or for assistance. A telephone number should also be provided, where possible that of a named individual who can provide assistance. These procedures should be referred to in the authority's publication scheme.
6. Staff working in public authorities in contact with the public should bear in mind that not everyone will be aware of the Act, or Regulations made under it, and they will need where appropriate to draw these to the attention of potential applicants who appear unaware of them.
7. Where a person is unable to frame his or her request in writing, the public authority should ensure that appropriate assistance is given to enable that person to make a request for information. Depending on the circumstances, consideration should be given to:
 - advising the person that another person or agency (such as a Citizens Advice Bureau) may be able to assist them with the application, or make the application on their behalf;
 - in exceptional circumstances, offering to take a note of the application over the telephone and then send the note to the applicant for confirmation (in which case the written note of the telephone request, once verified by the applicant and returned, would constitute a written request for information and the statutory time limit for reply would begin when the written confirmation was received).

This list is not exhaustive, and public authorities should be flexible in offering advice and assistance most appropriate to the circumstances of the applicant.

Clarifying the request:

8. A request for information must adequately specify and describe the information sought by the applicant. Public authorities are entitled to ask for more detail, if needed, to enable them to identify and locate the information sought. Authorities should, as far as reasonably practicable, provide assistance to the applicant to enable him or her to describe more clearly the information requested.
9. Authorities should be aware that the aim of providing assistance is to clarify the nature of the information sought, not to determine the aims or motivation of the applicant. Care should be taken not to give the applicant the impression that he or she is obliged to disclose the nature of his or her interest as a precondition to exercising the rights of access, or that he or she will be treated differently if he or she does (or does not). Public authorities should be prepared to explain to the applicant why they are asking for more information. It is important that the applicant is contacted as soon as possible, preferably by telephone, fax or e-mail, where more information is needed to clarify what is sought.
10. Appropriate assistance in this instance might include:
 - providing an outline of the different kinds of information which might meet the terms of the request;
 - providing access to detailed catalogues and indexes, where these are available, to help the applicant ascertain the nature and extent of the information held by the authority;
 - providing a general response to the request setting out options for further information which could be provided on request.

This list is not exhaustive, and public authorities should be flexible in offering advice and assistance most appropriate to the circumstances of the applicant.

11. In seeking to clarify what is sought, public authorities should bear in mind that applicants cannot reasonably be expected to possess identifiers such as a file reference number, or a description of a particular record, unless this information is made available by the authority for the use of applicants.

Limits to advice and assistance

12. If, following the provision of such assistance, the applicant still fails to describe the information requested in a way which would enable the authority to identify and locate it, the authority is not expected to seek further clarification. The authority should disclose any information relating to the application which has been successfully identified and found for which it does not propose to claim an exemption. It should

also explain to the applicant why it cannot take the request any further and provide details of the authority's complaints procedure and the applicant's rights under section 50 of the Act (see "Complaints Procedure" in section VI).

Advice and assistance and fees

13. Where the applicant indicates that he or she is not prepared to pay the fee notified in any fees notice given to the applicant, the authority should consider whether there is any information that may be of interest to the applicant that is available free of charge.
 14. Where an authority is not obliged to comply with a request for information because, under section 12(1) and regulations made under section 12, the cost of complying would exceed the "appropriate limit" (i.e. cost threshold) the authority should consider providing an indication of what, if any, information could be provided within the cost ceiling. The authority should also consider advising the applicant that by reforming or re-focussing their request, information may be able to be supplied for a lower, or no, fee.
 15. An authority is not expected to provide assistance to applicants whose requests are vexatious within the meaning of section 14 of the Act. Guidance on what constitutes a vexatious request can be found in the DCA Handbook - 'Guidance on Processing Requests'. The Information Commissioner has also issued advice on dealing with vexatious and repetitious requests.
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III Transferring requests for information

16. The following paragraphs apply in any case in which a public authority is not able to comply with a request (or to comply with it in full) because it does not hold the information requested, and proposes, in accordance with section 1(1)(a), to confirm that it does not hold that information.
17. If the authority has reason to believe that some or all of the information requested, but which it does not hold, is held by another public authority, the authority should consider what would be the most helpful way of assisting the applicant with his or her request.
18. In most cases this is likely to involve:
 - contacting the applicant and informing him or her that the information requested may be held by another public authority;
 - suggesting that the applicant re-applies to the authority which the original authority believes may hold the information; and
 - providing him or her with contact details for that authority.
19. However, in some cases the authority to which the original request is made may consider it to be more appropriate to transfer the request to another authority in respect of the information which it does not hold. In

such cases, the authority should consult the other authority with a view to ascertaining whether it does in fact hold the information and, if so, whether it is obliged to confirm this under section 1(1) of the Act. If that is the case, the first authority should proceed to consider transferring the request. A request (or part of a request) should not be transferred without confirmation by the second authority that it holds the information, and will confirm as much to the applicant on receipt of a request.

20. Before transferring a request for information to another authority, the original authority should consider:
 - whether a transfer is appropriate; and if so
 - whether the applicant is likely to have any grounds to object to the transfer. If the authority reasonably concludes that the applicant is not likely to object, it may transfer the request without going back to the applicant, but should tell him or her it has done so.
 21. Where there are reasonable grounds to believe an applicant is likely to object, the authority should only transfer the request to another authority with his or her consent. If the authority is in any doubt, it may prefer to advise the applicant to make a new request to the other authority, and to inform the applicant that the other authority has confirmed that it holds the information.
 22. Where a request or part of a request is transferred from one public authority to another, the receiving authority should comply with its obligations under Part I of the Act in the same way as it would in the case of a request that is received direct from an applicant. The time for complying with such a request should be calculated by regarding the date of transfer as the date of receipt of the request.
 23. All transfers of requests should take place as soon as is practicable, and the applicant must be informed as soon as possible once this has been done.
 24. Where a public authority is unable either to advise the applicant which public authority holds, or may hold, the requested information or to facilitate the transfer of the request to another authority (or considers it inappropriate to do so) it should consider what advice, if any, it can provide to the applicant to enable him or her to pursue his or her request.
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IV Consultation with Third Parties

25. There are many circumstances in which:
 - requests for information may relate to persons other than the applicant and the authority; or
 - disclosure of information is likely to affect the interests of persons other than the applicant or the authority.

26. It is highly recommended that public authorities take appropriate steps to ensure that such third parties, and those who supply public authorities with information, are aware of the public authority's duty to comply with the Freedom of Information Act, and that therefore information will have to be disclosed upon request unless an exemption applies.
 27. In some cases it will be necessary to consult, directly and individually, with such persons in order to determine whether or not an exemption applies to the information requested, or in order to reach a view on whether the obligations in section 1 of the Act arise in relation to that information. But in a range of other circumstances it will be good practice to do so; for example where a public authority proposes to disclose information relating to third parties, or information which is likely to affect their interests, reasonable steps should, where appropriate, be taken to give them advance notice, or failing that, to draw it to their attention afterwards.
 28. In some cases, it may also be appropriate to consult such third parties about such matters as whether any further explanatory material or advice should be given to the applicant together with the information in question. Such advice may, for example, refer to any restrictions (including copyright restrictions) which may exist as to the subsequent use which may be made of such information.
 29. No decision to release information which has been supplied by one government department to another should be taken without first notifying, and where appropriate consulting, the department from which the information originated.
 30. Where information to be disclosed relates to a number of third parties, or the interests of a number of third parties may be affected by a disclosure, and those parties have a representative organisation which can express views on behalf of those parties, the authority may consider whether it would be sufficient to notify or consult with that representative organisation. If there is no representative organisation, the authority may consider that it would be sufficient to notify or consult with a representative sample of the third parties in question.
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V Freedom of Information and confidentiality obligations

31. Public authorities should bear clearly in mind their obligations under the Freedom of Information Act when preparing to enter into contracts which may contain terms relating to the disclosure of information by them.
32. When entering into contracts with non-public authority contractors, public authorities may be asked to accept confidentiality clauses, for example to the effect that information relating to the terms of the contract, its value and performance will not be disclosed. Public authorities should carefully consider the compatibility of such terms with their obligations under the Act. It is important that both the public authority and the contractor are aware of the limits placed by the Act on the enforceability of such confidentiality clauses.
33. The Act does, however, recognise that there will be circumstances and respects in which the preservation of confidentiality between public

authority and contractor is appropriate, and must be maintained, in the public interest.

34. Where there is good reason, as recognised by the terms of the exemption provisions of the Act, to include non-disclosure provisions in a contract, public authorities should consider the desirability where possible of making express provision in the contract identifying the information which should not be disclosed and the reasons for confidentiality. Consideration may also be given to including provision in contracts as to when consultation with third parties will be necessary or appropriate before the information is disclosed.
 35. Similar considerations will apply to the offering or acceptance of confidentiality obligations by public authorities in non-contractual circumstances. There will be circumstances in which such obligations will be an appropriate part of the acquisition of information from third parties and will be protected by the terms of the exemption provisions of the Act. But again, it will be important that both the public authority and the third party are aware of the limits placed by the Act on the enforceability of expectations of confidentiality, and for authorities to ensure that such expectations are created only where to do so is consistent with their obligations under the Act.
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VI Complaints procedure

36. Each public authority should have a procedure in place for dealing with complaints both in relation to its handling of requests for information. The same procedure could also usefully handle complaints in relation to the authority's publication scheme. If the complaints cannot be dealt with swiftly and satisfactorily on an informal basis, the public authority should inform persons if approached by them of the details of its internal complaints procedure, and how to contact the Information Commissioner, if the complainant wishes to write to him about the matter.
37. When communicating any decision made to refusing a request, in reliance on an exemption provision, public authorities are obliged, under section 17(7) of the Act notify the applicant of particulars of the procedure provided by the public authority for dealing with complaints (or to state that it does not have one). In doing so, they should provide full details of their own complaints procedure, including how to make a complaint and inform the applicant of the right to complain to the Commissioner under section 50 if he or she is still dissatisfied following the authority's review.
38. Any written reply from the applicant (including one transmitted by electronic means) expressing dissatisfaction with an authority's response to a request for information should be treated as a complaint, as should any written communication from a person who considers that the authority is not complying with its publication scheme. These

communications should be handled in accordance with the authority's complaints procedure, even if, in the case of a request for information under the general rights of access, the applicant does not expressly state his or her desire for the authority to review its decision or its handling of the application.

39. The complaints procedure should provide a fair and thorough review of handling issues and of decisions taken pursuant to the Act, including decisions taken about where the public interest lies in respect of exempt information. It should enable a fresh decision to be taken on a reconsideration of all the factors relevant to the issue. Complaints procedures should be as clear and simple as possible. They should encourage a prompt determination of the complaint.
40. Where the complaint concerns a request for information under the general rights of access, the review should be undertaken by someone senior to the person who took the original decision, where this is reasonably practicable. The public authority should in any event undertake a full re-evaluation of the case, taking into account the matters raised by the investigation of the complaint.
41. In all cases, complaints should be acknowledged promptly and the complainant should be informed of the authority's target date for determining the complaint. Where it is apparent that determination of the complaint will take longer than the target time (for example because of the complexity of the particular case), the authority should inform the applicant and explain the reason for the delay. The complainant should always be informed of the outcome of his or her complaint.
42. Authorities should set their own target times for dealing with complaints; these should be reasonable, and subject to regular review. Each public authority should publish its target times for determining complaints and information as to how successful it is with meeting those targets.
43. Records should be kept of all complaints and of their outcome. Authorities should have procedures in place for monitoring complaints and for reviewing, and, if necessary, amending, procedures for dealing with requests for information where such action is indicated by more than occasional reversals of initial decisions.
44. Where the outcome of a complaint is a decision that information should be disclosed which was previously withheld, the information in question should be disclosed as soon as practicable and the applicant should be informed how soon this will be.
45. Where the outcome of a complaint is that the procedures within an authority have not been properly followed by the authority's staff, the authority should apologise to the applicant. The authority should also take appropriate steps to prevent similar errors occurring in future.
46. Where the outcome of a complaint is that an initial decision to withhold information is upheld, or is otherwise in the authority's favour, the applicant should be informed of his or her right to apply to the Commissioner, and be given details of how to make an application, for a decision on whether the request for information has been dealt with in accordance with the requirements of Part I of the Act.