

Section 45 - Code of Practice – request handling

Freedom of Information Act

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Introduction

1. The Freedom of Information Act 2000 (FOIA) gives rights of public access to information held by public authorities.
2. An overview of the main provisions of FOIA can be found in [the Guide to freedom of information](#).
3. This is part of a series of guidance, which goes into more detail than the Guide, to help public authorities to fully understand their obligations and promote good practice.
4. This guidance explains to public authorities how the section 45 Code of Practice can help them handle requests for information

Overview

The section 45 Code of Practice (the code) fulfils the duty of the Chancellor of the Duchy of Lancaster set out in section 45 of FOIA.

The code provides guidance on the practice it would be desirable for public authorities to follow to meet their obligations under FOIA.

Adhering to the code will result in positive benefits for an authority, and in practical terms offer good customer service. This guidance clarifies:

- the status of the code;
- the practical benefits of conforming to the code; and
- the consequences of not conforming to the code.

5. Section 47 of FOIA places a duty on the Information Commissioner to promote the following of good practice by public authorities and the observance, by them, of FOIA and codes of practice.
6. The code provides guidance on how to deal with requests for information. It should be used as a handbook to help public authorities with the day to day handling of requests.

Status of the code

7. The code is derived from the legislation itself. Section 45 of FOIA requires the production of a code of practice providing guidance to public authorities.

A new [Section 45 Code of Practice](#) was issued on 4 July 2018. We will update this guidance in due course.

What FOIA says

8. Section 45 of FOIA states:

45. (1) The Chancellor of the Duchy shall issue, and may from time to time revise, a code of practice providing 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 the authorities' functions under Part I.

(2) The code of practice must, in particular, include provision relating to—

- (a) the provision of advice and assistance by public authorities to persons who propose to make, or have made, requests for information to them,
- (b) the transfer of requests by one public authority to another public authority by which the information requested is or may be held,
- (c) consultation with persons to whom the information requested relates or persons whose interests are likely to be affected by the disclosure of information,
- (d) the inclusion in contracts entered into by public authorities of terms relating to the disclosure of information,
- (da) the disclosure by public authorities of datasets held by them, and
- (e) the provision by public authorities of procedures for dealing with complaints about the handling by them of requests for information.

(2A) Provision of the kind mentioned in subsection (2)(da) may, in particular, include provision relating to—

- (a) the giving of permission for datasets to be re-used,
- (b) the disclosure of datasets in an electronic form which is capable of re-use,

(c) the making of datasets available for re-use in accordance with the terms of a licence,
(d) other matters relating to the making of datasets available for re-use,
(e) standards applicable to public authorities in connection with the disclosure of datasets.

(3) Any code under this section may make different provision for different public authorities.

(4) Before issuing or revising any code under this section, the Chancellor of the Duchy shall consult the Commissioner.

(5) The Chancellor of the Duchy shall lay before each House of Parliament any code or revised code made under this section.

9. The government has issued an additional [Code of Practice](#) (datasets code) under section 45 of FOIA, dealing specifically with datasets. This supplements the main code; it does not replace it. Public authorities should consult the new datasets code, as well as our [datasets guidance](#), in order to understand their duties under the dataset provisions.
10. Prior to the coming into force of the [Transfer of Functions \(Information and Public Records\) Order 2015](#) the section 45 Code of Practice was issued by the Secretary of State.

What the code says

11. The code provides practical advice for public authorities on dealing with requests for information and covers the following areas:
 - Advice and assistance
 - Fees
 - Transferring requests
 - Consultation with third parties
 - Confidentiality obligations
 - Complaints procedures

General advice to public authorities

12. The code provides guidance to help public authorities meet their obligations under Part 1 of FOIA, the main features of which are:
 - General rights of access to information subject to certain conditions and exemptions;
 - A duty to provide reasons for any refusal in cases where access to information is withheld in reliance upon an exemption from disclosure;
 - A duty to provide reasonable advice and assistance to applicants;
 - A duty to adopt and maintain a publication scheme, approved by the Information Commissioner.
13. Any written communications to a public authority, including those sent electronically, could be a request for information under FOIA.
14. In many cases requests may be dealt with in the normal course of business. Nevertheless it is important for a public authority to ensure that appropriate training is provided to staff so they can recognise a request under FOIA and consider any relevant codes of practice and guidance.
15. In larger public authorities there should be a central pool of staff with freedom of information expertise to provide advice to other staff members as required.
16. A public authority should also be aware of how other legislation such as the Environmental Information Regulations 2004 and the Data Protection Act 1998 may affect the disclosure of information.

Provision of advice and assistance

17. Part II of the code provides guidance to public authorities on the recommended practice to follow in discharge of their duties under section 16 of FOIA.
18. Section 16 of FOIA says:

16.—(1) It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.

(2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.

19. Where a public authority has complied with the code's recommendations on the provision of advice and assistance it will be considered to have met its section 16 obligations. Although a public authority may choose to go beyond the requirements of the code it does not need to in order to comply with section 16.
20. Although failure to comply with the code will not necessarily result in a breach of section 16, the code encourages a public authority to follow it to reduce the risk of this happening.

Advice and assistance to those proposing to make requests

21. Paragraphs 4 to 7 of the code deal with advice and assistance to those proposing to make requests.
22. A public authority's publication scheme should explain how it deals with requests for information. It should provide contact details to make it easier for applicants to submit requests or seek assistance.
23. The general public may not be aware of FOIA and a public authority's staff should remember this when dealing with

potential applicants. They should use language appropriate for the requester and ensure that they provide any advice in a clear and intelligible format.

24. This would include drawing certain provisions of FOIA to the attention of potential applicants who appear unaware of them.
25. The code says that 'where a person is unable to frame his or her request in writing, '.....'appropriate assistance is given to enable that person to make a request for information.'
26. The code provides some suggestions on how to offer 'assistance' however it is up to the public authority to decide on the best way of providing such assistance based on the circumstances in question.
27. More information and examples are provided in our guidance on [the duty to provide advice and assistance](#).

Conditional requests

28. A conditional request is a request made on the basis of either:
 - some future event taking place; or
 - the status quo remaining the same.

This type of request is covered in more detail in our guidance on [recognising a request](#).

29. In these circumstances, and in order to conform with the code, the public authority will need to advise the potential requester:
 - that they can make a request under FOIA which must then be answered within 20 working days;
 - to submit a request now and receive a response within that timeframe (even if the response is that no information is held yet); **or**
 - to submit a request at a later date, after the anticipated event takes place.

A failure to do so will be a breach of section 16.

30. The provision of advice and assistance should not normally affect the 20 day timescale for compliance unless the public authority is unable to identify the information sought without further clarification.

Clarification of the request

31. Paragraphs 8 to 11 of the code deal with 'clarifying the request' and relate specifically to when a public authority needs more information to identify and locate the information a requester is looking for.
32. A public authority is entitled to ask for more detail **if needed** and in this case should assist applicants in clarifying the information requested.
33. The code does not require a public authority to assist applicants in describing the information more clearly if it can deal with the request as it has been presented.
34. If a public authority can objectively read an information request in more than one way it may need further information in order to identify the information requested. Section 16 requires a public authority to assist the applicant to clarify the request under these circumstances.
35. The code provides some examples of what might represent appropriate assistance in cases where more information is needed to clarify a request. These examples are not exhaustive however and a public authority needs to be flexible in its approach.
36. If a public authority is only aware of one objective reading of a request then no section 16 duty arises.
37. If it is later found that the request can be objectively read in more than one way there will be a breach of section 1 of FOIA because the information has not been provided to the requester's intended alternative reading of the request.
38. The code says that '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.**'
39. If a public authority is able to identify the information requested without requiring any further clarification, there is no need to contact the applicant and volunteer, for example, access to indexes or details of other related information that it holds. The code does not require the public authority to contact the applicant to discuss their request with them and check that they have actually asked for what they want.

Example

The Information Tribunal (IT) in [Berend v The Information Commissioner and London Borough of Richmond upon Thames \(LBRT\) \(EA2006/0049 & 0050 12 July 2007\)](#) confirmed that “the only obligation to initiate contact with the applicant under the Section 45 Code relates to the situation that arises where the request requires clarification” and accepted that in the circumstances of this particular case “the request appeared plain when read objectively by the public authorityconsequently there was no requirement for LBRT to seek a second meaning or ask for clarification”

However although the Tribunal was satisfied that the public authority’s objective reading of the request meant that no section 16 duty arose, it did find that the request could be objectively read in two ways, which gave rise to a section 1 breach.

40. Our guidance on [interpreting and clarifying requests](#) provides further information on what a public authority should consider when interpreting a request, and when it should ask the requester for clarification.

Limits to advice and assistance

41. Paragraph 12 says that if a public authority has provided appropriate assistance to an applicant, but the applicant still fails to adequately describe the information sought, the public authority is not obliged to seek further clarification.
42. The public authority should disclose any information it has been able to identify and find which is not subject to any exemption.
43. The public authority should explain to the applicant why it is unable to progress the request further and provide details of its complaints procedure and the right to complain to the Information Commissioner under section 50 of FOIA.

Advice and assistance and fees

44. Paragraphs 13 to 14 of the code address the issue of costs and the factors a public authority should consider in circumstances where:
- the applicant is not prepared to pay the fee specified in any fees notice; or
 - the cost of complying with the request would exceed the 'appropriate limit' as covered in section 12 of FOIA.
45. The Commissioner has published guidance [on fees that may be charged when the cost of compliance does not exceed the appropriate limit](#) and [requests where the cost of compliance with a request exceeds the appropriate limit](#).

Advice and assistance and vexatious requests

46. Paragraph 15 states that 'an authority is not expected to provide assistance to applicants whose requests are vexatious within the meaning of section 14 of FOIA'.
47. If a public authority considers that a request is vexatious because it is wide and unfocused, it may be appropriate to offer advice and assistance to help the requester to reformulate their request, although we do not consider it is under any obligation to do so.
48. Our published [guidance on dealing with vexatious requests](#) covers this area in more detail.

Transferring requests for information

49. Part III of the code covers circumstances where a public authority receives a request for information that it does not hold, but believes is available from another authority. This is not covered in FOIA.
50. The first public authority should contact the second to verify:
- whether it does hold the information in question; and if so,
 - whether the second authority is obliged to confirm the information is held under section 1(1) of FOIA.

51. If this is the case then the public authority should consider the best way of assisting the applicant with their request.
52. This is likely to involve either transferring the request to the other authority, or advising the applicant to re-direct their request. Paragraphs 18 to 20 of the code provide more detail around the procedures to be followed for each option.
53. A public authority should consider whether there is any other practical advice it can offer the applicant if it does not hold the information but is unable to:
 - provide details of any other public authority that may hold the information requested; or
 - transfer the request to another public authority.
54. However the public authority decides to deal with this kind of request, it should make sure that it informs the applicant in writing within the 20 working day timeframe:
 - that it does not hold the information; and
 - what action it has taken.
55. If the public authority thinks that the requester is likely to object, it should obtain appropriate consent before transferring the request to another authority. It may be preferable to advise the applicant to make a new request to the second authority.
56. The authority receiving the request should treat the day of transfer as the date of receipt when calculating the timescale for complying with the request.
57. Our guidance on [time limits for compliance under the FOIA](#) gives more information on this aspect of request handling.

Consultation with third parties

58. Part IV of the code deals with consultation with third parties.
59. A request for information or the disclosure of information will often involve persons other than the applicant and the authority.
60. The public authority should ensure that any third parties, including those who supply public authorities with information, are made aware of the public authority's duties under FOIA and

that it must release information upon request unless an exemption applies.

61. The statutory duty to release information, even if it was originally provided by a third party, lies with the public authority. Although the third party may refuse consent to release this information, any refusal would not be binding on the public authority.
62. In some cases the duty to consult with third parties will only arise once a request has been received.
63. A public authority should ask third parties whether they hold further relevant material or have any other useful advice for the applicant about the information requested.
64. It is good practice for a public authority to give advance notice to third parties that it is proposing to disclose information which may affect or relate to them, where it is reasonable to do so. If that is not possible, then it should take steps to make them aware of it as soon as possible after the event.
65. An authority should not consider releasing information provided by one government department to another, until it has consulted the department where the information originated.

Freedom of information and confidentiality

66. Part V of the code deals with freedom of information and confidentiality obligations.
67. It is common for contracts involving non-public authority contractors to contain confidentiality clauses, restricting the disclosure of the contract terms, value and performance details. However, FOIA places limits on the enforceability of these clauses.
68. A public authority cannot contract out its obligations under FOIA and will therefore need to consider how any confidentiality clauses may interact with its FOI responsibilities.
69. When a public authority enters into a contract, it should let the other party know before the contract is drawn up that part or all of the contract may need to be disclosed if a request under FOIA is received.

70. A public authority can use confidentiality clauses to identify information that may be exempt; however it must consider whether these clauses are compatible with its FOIA obligations.
71. Clauses may specify the circumstances where the other party to a contract should be consulted before disclosure. Such clauses cannot, however, prevent disclosure under FOIA if the information is not strictly speaking confidential.
72. Confidentiality considerations may also apply in non-contractual circumstances, where for example third party organisations have provided certain information to public authorities on an expressly confidential basis.
73. Just because information has been provided in confidence it does not necessarily follow that it will be exempt from disclosure under section 41 of FOIA.
74. A public authority will need to consider whether any release of information could result in an actionable breach of confidence and seek appropriate legal advice as necessary.
75. Detailed [guidance on information provided in confidence \(section 41\)](#) and [outsourcing and freedom of information](#) is available on our website www.ico.org.uk.

Complaints procedure

76. Part VI of the code provides advice on how public authorities should deal with complaints relating to request handling.
77. Any written correspondence where the applicant says they are unhappy with a public authority's response to an information request, or any communication which indicates that the authority is not meeting its obligations as set out within its publication scheme should be treated as a complaint.
78. A public authority should establish complaint handling procedures with set target times for resolution. These procedures should be publicised and covered in the public authority's publication scheme.
79. Complaints handling procedures should be clear and easy to follow. Any complaint received should be acknowledged promptly with timescales given for resolving the issue.

80. The code covers the additional information a public authority should include when refusing a request. Our guidance on [refusing a request – writing a refusal notice](#) provides further advice on this aspect.
81. Section 17(7) of FOIA requires public authorities to give applicants details of their complaints procedure, including how to make a complaint and the right to complain to the Information Commissioner’s Office under section 50 of FOIA if they remain dissatisfied with the outcome of any internal review.
82. Paragraphs 39 to 41 cover the internal review process and stress the importance of keeping the applicant informed at all stages on:
 - the progress of the complaint; and
 - the likely timescale for completion.
83. If an internal review results in the disclosure of information which was previously withheld, the public authority should inform the applicant of the outcome as soon as possible and tell them when they are likely to receive the information.
84. In any event an internal review should take no longer than 20 working days in most cases, or 40 in exceptional circumstances.
85. If an internal review results in a public authority upholding the original decision (that, as at the date of the request, the information was exempt from disclosure) it may be appropriate to release further information if circumstances have changed and the original concerns about disclosure no longer apply.
86. There is no obligation on a public authority to do so but it may resolve matters for the applicant and reduce the likelihood of them making a complaint if you do.
87. A public authority should maintain records of complaints including details of the outcome and the timescales involved.
88. A public authority should review these records and its complaints handling procedures on a regular basis so that any weaknesses can be identified and improvements made where necessary. In cases where the authority has not followed the correct procedures, it is good practice to make a formal

apology to the applicant and take remedial measures to ensure that this does not re-occur.

Practical benefits of conforming to the code

89. Adhering to the code should result in positive benefits for an authority, and will help it to provide good customer service.
90. Benefits include:
- reduced likelihood of breaching the FOIA;
 - increased customer satisfaction;
 - improved public perception of an organisation;
 - quicker turnaround of FOIA requests;
 - more streamlined procedures;
 - a saving of staff time; and
 - potentially less resource spent on dealing with complaints to the ICO.
91. These benefits are interlinked, and a public authority will obtain most benefit by adhering to all aspects of the code.

Consequences of not conforming to the code

92. The Commissioner can take account of whether the code has been observed when considering complaints.
93. If the Commissioner needs more information, he can serve an information notice before deciding whether or not a public authority's practice conforms to the code.
94. The Commissioner has the power to issue a practice recommendation under section 48 of FOIA if he considers that a public authority is not conforming to the code. This will include steps he thinks the organisation should follow in order to meet the code's requirements.

95. The practice recommendation would indicate which provisions of the code had not been met and specify steps for the public authority to take.
96. Failure to follow a practice recommendation could lead to a failure to comply with FOIA or the EIR, or could lead to an adverse comment in the Commissioner's report to Parliament.

More information

97. This guidance relates only to FOIA. If the information is environmental, public authorities will instead need to consider our [guidance on regulation 16 of the EIR](#).
98. Additional guidance is available on [our guidance pages](#).
99. This guidance has been developed drawing on ICO experience and is based upon the current published section 45 Code of Practice. It will be reviewed from time to time in line with the publication of any updated or amended code and in line with decisions of the Information Commissioner, Tribunals and courts.
100. If you need any more information about this or any other aspect of freedom of information, please [contact us](#), or visit our website at www.ico.org.uk.