

Openness by design – our draft access to information strategy

Contents

Openness by design - our draft strategy at a glance 3

Introduction 4

Our strategic context 6

Strategic goals 8

Measuring progress 13

Your feedback 14

Openness by design - our draft strategy at a glance

Our ambition over the next three years is to be more proactive and increase the impact of our regulation of access to information legislation.

This will enable more people to have trust and confidence in the openness and accountability of public authorities. It will also give people better opportunities to participate in civic life.

We will achieve this ambition by focusing on five priorities:

- Work in partnership to improve standards of openness, transparency and participation among public authorities in a digital age.
- Provide excellent customer service to members of the public and public authorities and lead by example in fulfilling our statutory functions.
- Raise awareness of access to information rights and make it even easier for the public to exercise their rights.
- Promote the reform of access to information legislation so it remains fit for purpose.
- Develop and sustain our international collaboration.

We will know we have succeeded when:

- people have more trust in the openness and accountability of public authorities;
- people have more confidence that we will identify good and poor practice in public authorities and take action where necessary to protect information rights, and
- public authorities improve their standards of openness and transparency as a result of our regulation.

Over the course of this plan, we will be exploring new ways to assess our progress in meeting our ambitions as well as existing mechanisms, such as our annual track survey.

Introduction

The purpose of this strategy is to set out the Information Commissioner's priorities over the next three years in relation to the access to information legislation she regulates. It relates to her powers and duties under the Freedom of Information Act (FOIA) 2000, the Environmental Information Regulations (EIR) 2004 and the Reuse of Public Sector Information Regulation 2014.

It has been prepared as a draft for consultation and the Information Commissioner welcomes feedback on any aspect of the strategy. Details of how to share your feedback are included at the end of this document.

Our vision

Our ambition over the next three years is to be more proactive and increase the impact of our regulation of information rights laws. This will allow people to have more trust and confidence in the openness and accountability of public authorities and have more opportunities to participate in civic life.

Our values

This strategy sets out our vision and makes clear that:

- we will seek to achieve our goals through our [Regulatory Action Policy](#), which sets out our overall approach to regulation;
- we will put our organisational values at the heart of everything we do, and we will be ambitious, collaborative and service focused.

Ambitious: we will be ready to test new boundaries and take advantage of new opportunities. We will work with a genuine sense of urgency, continuously improving and striving to be the best we can be.

Collaborative: we will work effectively with a wide range of partners, seeking to share information and expertise to achieve our collective goals.

Service focused: we will work impartially and ethically to provide excellent services and innovate to remain relevant to the environment we regulate.

Our role

In England, Wales and Northern Ireland, the Information Commissioner regulates the FOIA and EIR laws and undertakes independent reviews of access rights. Information held by Scottish public authorities is covered by Scotland's own Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004 under the jurisdiction of the Scottish Information Commissioner.

The Information Commissioner has both a reactive and proactive role in relation to access to information rights. Each year, she receives between 6,000 and 6,500 individual requests from members of the public asking for an independent review of decisions made by public authorities. She has a range of powers and duties to issue notices of her decisions to public authorities and powers to certify to the High Court if a public authority fails to comply with them. She also has powers to approve individual and model publication schemes prepared by public authorities and publish practice recommendations in relation to statutory codes of practice under FOIA.

The Commissioner has important proactive responsibilities to inform the public of their rights to information. She publishes guidance about access to information rights, has a duty to promote good practice and the power to lay reports before Parliament about the exercise of her functions under FOIA.

We do not see delivery of our statutory functions as a choice between our reactive and proactive responsibilities; rather, over the coming period, we want to ensure we use all our powers to drive forward improvements in standards of openness and transparency among public authorities and shine a light on where we find systemic failings.

We recognise that the performance of some public authorities in relation to the timeliness of their responses to information requests and overall levels of openness are not as high as we want or what citizens expect. We have listened to the calls for the Information Commissioner's Office to do more to raise standards and reinforce confidence in access to information rights. This draft strategy aims to set out our revised approaches and reflects the renewed commitment by the Information Commissioner to take a more robust, risk-based approach as set out in her [Regulatory Action Policy](#). We will do this through making proportionate use of all our regulatory tools, from education, advice, support and guidance through to the use of our enforcement powers.

The Information Commissioner is also subject to the same requirements as other public bodies in relation to the Freedom of Information Act and Environmental Information Regulations and we will aim to be an exemplar for other public authorities in our consideration of requests for information made to us.

Our strategic context

In framing this new strategy, we are also supporting delivery of the goals set out in the Information Commissioner's [Information Rights Strategic Plan](#).

- Goal #1: To increase the public's trust and confidence in how data is used and made available.
- Goal #2: Improve standards of information rights practice through clear, inspiring and targeted engagement and influence.
- Goal #3: Maintain and develop influence within the global information rights regulatory community.
- Goal #4: Stay relevant, provide excellent public service and keep abreast of evolving technology.
- Goal #5: Enforce the laws we help to shape and oversee.
- Goal #6: To be an effective and knowledgeable regulator for cyber related privacy issues.

In developing this strategy we recognise that information rights legislation faces a number of challenges. While the first thirteen years of freedom of information legislation in England, Wales and Northern Ireland has brought about a new culture of openness in many public authorities, this is not yet consistent across the public sector. There are opportunities to develop new practices to reinforce more proactive transparency in a digital age. The way we access and use information is continuing to change rapidly, freedom of information must keep pace if it is to continue to be effective.

The benefits of the provisions of FOIA and EIR are still not always recognised and celebrated for the part they play in supporting not only the accountability of public bodies, but also the long-term health of our democracy. Access to information provides an important catalyst for civic participation across a wide range of opportunities from local planning decisions to major infrastructure projects.

Sometimes, more energy is expended on the perceived costs and burdens of the legislation to public authorities. However, this approach often masks the real opportunities that public authorities have to improve their own information management and record keeping strategies, policies and processes. Poor information governance can lead not only to additional compliance costs, but also risks undermining positive incentives for improved practice and can damage overall customer service and reputation.

This approach is compounded by the ways in which access to information legislation has not always been able to keep pace with changes in the ways public services are planned, commissioned and delivered. It is clear that practice has not always been able to make the most of the opportunities presented by

Openness by design – our draft access to information strategy

the development and use of new technologies. We want to increase our own understanding and promote good practice of how existing and new technologies can leverage increased openness and transparency for both public authorities and those requesting information.

This strategy is intended to play its part in tackling these challenges.

Importantly, we recognise that we cannot achieve the ambitions set out in this strategy by working alone. Therefore, a priority for us will be to continue to build our external strategic partnerships across the public, private and civil society sectors both in the UK and internationally. The National Archives, for example, is a key partner for us as we develop shared work in relation to records management.

We are also mindful that to deliver the strategy, we need to continue to seek core grant-in-aid funding from government to deliver the full range of our statutory functions as casework volumes continue to increase.

Strategic goals

Goal #1 Improve standards of accountability, openness and transparency in a digital age

The Freedom of Information Act (FOIA) was originally conceived in 1997 as part of a wider open government programme, designed to support a fundamental change in the relationships between government and the governed, putting accountability and openness as the heart of a mature democracy. Over the last twenty years, there is evidence of the difference the legislation has made to attitudes and behaviours, alongside important developments in case law.

We want to encourage and inspire those we regulate to achieve the highest possible standards in their information rights practice. There are new opportunities to improve public access to information through open data initiatives and through the use of new search technologies.

However, it is clear there are also some challenges about compliance with the existing law – whether in relation to the extent to which records of decisions are made, the timeliness of responses by some public authorities, the appropriate use of exemptions or the extent to which publication schemes are being used to support proactive disclosure of information.

As a regulator, we have wide powers to shine a light on good practice and to report to Parliament on thematic and systemic issues where we consider practice falls below expected standards. As such, our intention is for this strategy to signal a step change in our approach to supporting improvements to information governance. This approach is already signalled in our [Regulatory Action Policy](#).

Strategic priorities

To achieve these improvements to openness and transparency we have identified the following priorities. We will:

- develop, pilot and roll out a self-assessment toolkit for public authorities to support them in making improvements to information handling practice and openness;
- build on our initial learning from Data Protection Impact Assessments and assess the feasibility of 'openness' or 'transparency' impact assessments and audits offered as an advisory service provided by the Information Commissioner's Office;
- increase the impact of FOIA enforcement activity through targeting of systemic non-compliance, consistent with the approaches set out in our [Regulatory Action Policy](#);
- working in partnership with technology experts, FOIA practitioners and stakeholders we will scope and publish a technology review to shine a light on

Openness by design – our draft access to information strategy

how public authorities are using technology in relation to searches for information;

- working in partnership with public authorities and civil society organisations, research and promote new digital approaches to proactive disclosure of information, including making the most of open data opportunities, and
- use insight from our casework and intelligence from the external environment to scope and publish a series of thematic reports and own- motion studies that make recommendations for change to drive improvements in understanding, accountability, openness and transparency. Early work is likely to focus on themes such as the documentation of decisions, records retention, the timeliness of responses and proactive transparency initiatives, alongside targeted work focusing on specific sectors.

Goal #2 Provide excellent customer service in our independent review services for the public and public authorities

We have a diverse range of public authorities within our jurisdiction from large central government departments to very small parish councils and we also have a varied range of people who request an independent review from us.

Historically, we have not sought systematic feedback from either those who bring a case to us, or from public authorities. In order to ensure we are focusing on issues that matter most to the public, we need to better understand their concerns. The context in which we are providing our services is changing rapidly with not only sustained resource pressures on many public authorities, but also increases to the volume of complaints we receive each year.

We also need to review our processes and internal structures to ensure we are providing the very best possible customer service within our current resources, both in terms of quality and timeliness.

Strategic priorities

To achieve improvements to the services we provide we will focus on the following strategic priorities:

- devise, pilot and roll-out a programme of customer feedback;
- use the feedback to inform the development of a new service charter setting out expectations for the public and public authorities;
- review and implement improvements to our core processes and systems to meet customer needs and improve the efficiency and quality of the services we provide, and
- review and develop new guidance consistent with our [Regulatory Action Policy](#), prioritising those areas of greatest impact and promoting external guidance alongside the publication of our Decision Notices.

Goal #3: Raise awareness of access to information rights and make them more accessible

We know from our own published research that there has been an overall decline in public awareness of the right to request information from public bodies with just 49% of people aware of their rights under FOIA and 33% aware of their rights under EIR. We also need to understand any differences in awareness among different groups of the population, so we can target our awareness-raising and education efforts; this approach will also be reflected in our new Children's Strategy.

Inevitably, we only consider a small proportion of the total information requests made to public authorities each year. It means there are opportunities to learn more about, promote and celebrate the everyday use of information rights and the difference they can make. We can also look at ways to make it easier for people to register concerns, as well as make formal requests for review.

At the moment, around 30% of cases that we receive are 'premature' or not ready for us to consider, which can be for a variety of reasons; often because there has not yet been an internal review by a public authority of a refusal to release information. While clearly we need to retain flexibility in how we take on cases, there are opportunities to make sure more people can come to us with their cases ready for consideration.

Strategic priorities

To achieve our goals we will focus on the following priorities:

- drawing on the learning from the recent ICO 'Your data matters' campaign, we will develop, deliver and evaluate a series of targeted information rights campaigns to raise awareness of FOIA and EIR rights and show how access to information makes a difference;
- develop new engagement channels to promote guidance, support and good practice for public authorities including the organisation of practitioner workshops, and
- review and refine our policies, processes and systems to make it easy for people to bring their cases to us and for public authorities to comply with the requirements of the law.

Goal #4 Promote the reform of information rights legislation so it remains fit for purpose

Since FOIA and EIR were implemented there have been significant developments and changes in the way public services are commissioned and delivered, with increasing blurring of the boundaries between 'public' and 'private'. The legislation has not kept pace with these changes and as a result there is an increasing 'transparency gap' that undermines access to information rights and public trust.

We will be publishing a report to Parliament in January 2019 making recommendations for change in relation to outsourced public services and some other categories of public service provision that are not within the scope of current legislation.

We will comprehensively review the operation of the both FOIA and EIR from our perspective as a regulator and seek the views of our stakeholders and civil society organisations to make further recommendations for changes to legislation that will improve access to information rights.

Access to information rights depends on public authorities documenting their key activities and decisions. Failure to do this can undermine public accountability, the historical record and public trust. We are therefore interested to explore further whether 'duty to document' approaches provide a way to address these issues across England, Wales and Northern Ireland.

Strategic priorities

To ensure the legislation we regulate remains fit for purpose we will:

- continue to build and promote the case for changes to the scope of FOIA and EIR legislation working closely with colleagues in government and Parliament, public authorities, the private sector, civil society organisations, the media and the public;
- engage and consult with our stakeholders to review other potential areas for legislative change, and
- work with other regulators and The National Archives to explore the practical application of duty to document frameworks.

Goal #5 Develop and sustain new international partnerships

The FOIA has been used historically as model for legislation in several jurisdictions around the globe and the ICO has a positive tradition of supporting the development of legislation and sharing practice across the world. 119 countries now have access to information legislation.

Improving standards of access to information practices and maintaining and developing influence within the global information rights community are two of the key pillars of the Information Commissioner's [Information Rights Strategic Plan](#). Both of these goals are being met by our partnership work to support the development of the International Conference of Information Commissioners (ICIC)¹.

Strategic priorities:

To build and sustain our international collaboration we will prioritise work to:

- promote standards of openness and transparency globally and aim to embed good practice by providing the secretariat for the International Conference of Information Commissioners;
- work in partnership with UNESCO and international colleagues to contribute towards promotion of access to information rights as part of the achievement of the United Nations Sustainable Development Goals framework, and
- continue to promote access to information rights as part of the wider work of the Open Government Partnership.

Measuring progress

In developing the proposals for this new strategic plan, we want to set out an ambitious programme of change that we believe will make a real difference in contributing towards creating a climate of openness and accountability as well as creating real opportunities for public participation.

As part of the work to deliver our overarching [Information Rights Strategic Plan](#), we will develop a performance management framework that will help us to assess our progress in achieving the goals set out in the strategic plan and the impact of our work. This framework will include plans to gather and act on customer feedback and our annual information rights survey.

Each year, we will report progress in the Information Commissioner's Annual Report and expect to be held to account by Parliament for our progress towards implementing our goals.

¹ The International Conference of Information Commissioners (ICIC) brings together freedom of information commissioners from across the globe to promote and share issues affecting public transparency and access to official information, identifying emerging challenges and sharing best practice. The vision of the ICIC is to be the global forum which connects Information Commissioners responsible for the protection and promotion of access to information laws in order to improve transparency and accountability to the benefit of everyone.

Your feedback

This strategy has been prepared as a draft for public consultation. We are interested to hear your views about our priorities for the next three years and the ways in which we measure our success.

To contribute please follow the link to our online survey [here](#). We will revise our strategy in light of feedback and publish the final version by March 2019.