

# Openness by design

The Information Commissioner's  
strategic plan 2019/20 – 2021/22



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## Foreword from the Information Commissioner

As UK Information Commissioner, my job is to uphold information rights on the public's behalf. I am tasked with regulating both the right to know, and the right to privacy. This dual mandate helps us adjudicate and balance between public interest scrutiny of public authorities and the protection of personal privacy.

Inevitably, much attention has focused recently on the implementation and enforcement of the General Data Protection Regulation (GDPR) and the Data Protection Act 2018. Increasingly over the coming period regulators will need to understand the intersections and interplay between these different rights and responsibilities. Accountability and transparency are also driving forces in the GDPR. While the rules of transparency and fairness have not changed, organisations are now obliged to account for what they do, why and how they do it. I expect we will be seeing far more freedom of information (FOI) requests about the application of data privacy policies and practice.

I am publishing this access to information strategy to set out our goals and priorities over the next three years. Access to information goes to the heart of a healthy, functioning democracy and has a key role to play in an era of increasing public concern and mistrust about misinformation and so-called 'fake news'. This strategy explains my ambitions for a step change to the reactive, request-mode, which characterises our current freedom of information laws, and I know that to achieve this will require a mix of legal reform, improved practice and cultural change.

The major priority in this new strategy is to ensure we focus on our role to enforce access to information rights through use of all of our regulatory powers. Guided by the framework in our [Regulatory Action Policy](#), the Information Commissioner's Office (ICO) will be proactive in how we seek compliance with the law and how we hold public authorities to account.

A key opportunity for all regulators is to ensure they remain relevant in a changing world. There is much to learn from the ways in which our data privacy legislation has now been updated to reflect the changing, global worlds in which it operates. It is my view, as set out in our '[Outsourcing Oversight?](#)' report published earlier in the year, that access to information legislation now also needs a similar reboot to reflect the changing models of public service provision. I argued at the time of the report's publication

for an urgent and constructive dialogue to bring about these changes and that remains a priority.

I see encouraging examples of good practice from public authorities and their work to create a climate of openness by design. But I also hear the more negative narratives from public authorities of all sizes about the burdens and costs of complying with access to information legislation.

Complying with the law is the best and easiest way to tackle these challenges and good leadership and effective governance are vital to creating an organisational climate of openness and transparency. I believe all public authorities can do more to strive towards making access to information rights count - to review how access to information rights are visible at board and senior management levels; to revisit approaches for proactive disclosure and to be exemplars of good practice in handling access to information requests.

The aim of this strategy is to set out how we will achieve our mission to uphold information rights, and clearly this can only be achieved through working closely with those organisations we oversee, our stakeholders and members of the public. In seeking to deliver our goals, we will pay close attention to the ways in which we can work together to bring about positive change and build the trust and confidence in public authorities that the public rightly expect.

Unlike our data protection fee income from data controllers, we are reliant on government grant-in-aid to fund our access to information work. Over the next three years, we expect to both continue to make the case for that funding, continue to deliver efficiencies in the ways we work and ensure our work plans are tailored to the resources available to us.

Elizabeth Denham CBE

Information Commissioner

## Openness by design - our strategy at a glance

Access to information goes to the heart of a healthy, functioning democracy. Services that are accountable and transparent are better public services.

Our ambition is to increase the impact of our oversight of access to information legislation. Our objective is encourage public bodies to comply with the law in the first instance, reducing the need for citizens to raise appeals with the Information Commissioner. Where necessary we will take enforcement action to secure compliance and uphold the law.

We will achieve our ambition by:

- ensuring that access to information rights is upheld in a consistent and timely manner and operates effectively in a digital age;
- providing excellent customer service to individuals making requests to us and lead by example in fulfilling our own statutory functions;
- raising awareness of access to information rights and make it easier for the public to exercise their rights;
- promoting the reform of access to information legislation so it remains relevant for our modern society and fit for purpose; and
- further developing and sustaining our international collaboration, learning from the best initiatives around the world.

We will know we have succeeded when:

- public authorities improve their compliance with access to information legislation;
- the public have more trust and confidence in the openness and accountability of public authorities; and
- awareness of access to information rights increases.

## Introduction

This strategy sets out the Information Commissioner's priorities over the next three years for the access to information legislation she regulates.

The strategy 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. These responsibilities are delivered alongside her regulation of data protection legislation and we recognise the important intersections between access to information and privacy rights. This access to information strategy is therefore aligned with the [Information Rights Strategic Plan \(IRSP\)](#) and the [Regulatory Action Policy \(RAP\)](#).

We have prepared the strategy following a public consultation and amended it in light of the feedback we received. A summary of our responses to the feedback is available on the [ICO website](#).

### Our vision

Our ambition is to increase the impact of our oversight of access to information legislation. Our objective is encourage public bodies to comply with the law in the first instance, reducing the need for citizens to raise appeals with the Information Commissioner. Where necessary we will take enforcement action to secure compliance and uphold the law.

### 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; and
- put our organisational values at the heart of everything we do.

**Ambitious:** we will be ready to test new boundaries and take advantage of new opportunities. We will work with a genuine sense of urgency, continually 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 FOIA and the 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 access to information rights.

Each year she receives approximately 6,000 individual requests from members of the public asking for an independent review of decisions made by public authorities. The Commissioner 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 good practice recommendations in statutory codes of practice under FOIA. In turn, the principles of good administration adopted by public sector ombudsman schemes also reflect requirements for openness and accountability by public bodies.

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.

The Commissioner does not see delivery of her statutory functions as a choice between reactive and proactive responsibilities. Rather, over the coming period the Information Commissioner will use all her powers to drive forward improvements in standards of openness and transparency among public authorities and shine a light on where she finds systemic failings.

The performance of some public authorities in the timeliness of their responses to information requests and overall levels of openness are not as high as we want and the public 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 strategy sets out our revised approaches and reflects the renewed commitment by the Information Commissioner to take a more robust, risk-based approach as laid 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. 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 IRSP:

**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 13 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 all of the public sector. There are important opportunities to develop new practices to reinforce more proactive transparency in a digital age. And as how 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 the EIR are still not always recognised and celebrated for the part they play in supporting the long-term health of our democracy as well as the accountability of public bodies. Access to information can provide an important catalyst for civic participation across a wide range of opportunities from local planning decisions to major infrastructure projects.

Sometimes, considerable energy is expended on the perceived costs and burdens of the legislation on public authorities or due to spurious or vexatious requests. However, this approach often masks the real opportunities and obligations that public authorities have to improve their own information management and record keeping strategies, policies and processes and the value of securing confidence from those they serve through openness and transparency.

Good record keeping practices, including the creation, management, retention and disposal of records, underpin compliance with access to information legislation. Planned and resourced record keeping facilitates not only the effective delivery of public services, but also enables accountability, openness and transparency. In turn, poor information governance can lead to additional compliance costs and risks damage to overall customer service and organisational reputation.

Access to information legislation has not always kept pace with changes in the ways public services are planned, commissioned and delivered. It is clear that in practice more could be made of the opportunities presented by 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 here by working alone, and 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. This includes working closely with national and local government for example. Organisations, such as the National Archives, are also key partners for us as we develop shared work in records management.

We are also mindful that to deliver this strategy we will 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. In turn, our ambitions and plans will need to be tailored to the resources available through grant-in-aid.

## Goal #1: Ensuring that access to information rights is upheld in a consistent and timely manner and operates effectively in a digital age

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 our democracy. Over the last twenty years, there is evidence that the legislation has made a difference 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: 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 improvements in compliance we will:

- prioritise increasing FOIA and the EIR compliance through targeting non-compliance and taking enforcement action consistent with the approaches set out in our [Regulatory Action Policy](#);
- use insights from our casework and policy analysis from the external environment to scope and publish a series of special or own-motion studies that make recommendations for improvements in understanding, accountability, openness and transparency;
- develop, pilot and roll out a self-assessment toolkit for public authorities, targeted to increase compliance and include opportunities for advisory ICO audits;
- explore the feasibility of developing an online portal to share information about the performance of public authorities in responding to information requests;
- work in partnership with technology experts, FOIA practitioners and stakeholders to scope and publish a technology review to assess how public authorities are using technology to search for information; and
- work in partnership with public authorities and civil society organisations to research and promote new digital approaches to proactive disclosure of information, including making the most of open data opportunities.

## Goal #2: Providing excellent customer service to individuals making requests to us and lead by example in fulfilling our own statutory functions

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

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, systems and procedures 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:

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

## **Goal #3: Raising awareness of access to information rights and making it easier for the public to exercise their rights**

We know from our own published [research](#) that historically there has been a decline in public awareness of the right to request information from public bodies. We will use the results from our 2019 survey to provide a baseline for our awareness raising work. We also want to understand any differences in awareness among various groups of the population so we can target our awareness-raising and education efforts.

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 individuals to register concerns, as well as make formal requests for review.

At the moment, we receive around 30% of cases that are 'premature' or not ready for us to consider for a variety of reasons, often because a public authority has not yet carried out an internal review about 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 individuals can come to us with their cases ready for consideration.

### **Strategic priorities**

To achieve our goals we will:

- draw on the learning from our 'Your data matters' campaign, to develop, deliver and evaluate a series of targeted information rights campaigns to raise awareness of FOIA and the EIR rights and show how access to information makes a difference;
- scope and assess the demand for resources for schools to support delivery of citizenship programmes;
- develop new engagement channels to promote guidance, support and good practice for public authorities, including organising practitioner workshops; and
- redesign our online forms to make it easier for individuals to know when we can help them and request a review from us.

### **Goal #4: Promoting 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 an increased blurring of the boundary between 'public' and 'private'. The legislation has not kept pace with these changes and as a result there is a widening 'transparency gap' that undermines access to information rights and public trust.

We published our report '[Outsourcing Oversight](#)' to Parliament in January 2019, making recommendations for change to outsourced public services and some other categories of public service provision that are not within the scope of current legislation.

We will continue to keep the operation of both the FOIA and the EIR under review 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 the 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 regulators and stakeholders including The National Archives to explore the practical application of duty to document frameworks.

## **Goal #5: Further developing and sustaining new international partnerships**

FOIA has been used historically as a 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 IRSP. We are meeting both of these goals by our partnership work to support the development of the [International Conference of Information Commissioners \(ICIC\)](#)<sup>i</sup>. Major progress has been made at the ICIC held in South Africa in 2019, with the adoption of the [Johannesburg Charter](#) to lay the foundations for the future development of this global forum.

## Strategic priorities

To build and sustain our international collaboration we will:

- promote standards of openness and transparency globally, and continue to support the strengthening of a global voice for access to information rights through our work to provide the Secretariat for the International Conference of Information Commissioners;
- work in partnership with UNESCO and international colleagues to contribute towards the promotion of access to information rights, as part of the achievement of the [United Nations Sustainable Development Goals](#) framework;
- continue to learn from good practice globally to support the further development and upholding of access to information rights; and
- continue to promote access to information rights as part of the wider work of the Open Government Partnership

## Measuring progress

To develop the proposals in this new strategic plan, we want to set out an ambitious programme of change that we believe will make a real difference to upholding access to information rights.

As part of the work to deliver our overarching IRSP we will assess our progress in achieving the goals set out in this strategic plan and the impact of our work. This will include gathering and acting on customer feedback and our annual information rights track survey. Each year we will report progress in the [Information Commissioner's Annual Report](#).

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<sup>i</sup> 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.