

Information held by a public authority for the purposes of the Freedom of Information Act

Freedom of Information Act

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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](#). 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 to promote good practice.
3. This guidance explains the circumstances in which information is considered to be held by a public authority for the purposes of FOIA.

Overview

- When a public authority holds information solely on behalf of another person it does not hold the information itself for FOIA purposes.
- Information is held for FOIA purposes if it is held by the public authority to any extent for its own purposes.
- When information is held by another person on behalf of a public authority, the information is held by the public authority for FOIA purposes.

What FOIA says

4. Section 3(2) sets out the legal principles that establish whether information is held for FOIA purposes.

- 3.**
(2) For the purposes of this Act, information is held by a public authority if—
- (a) it is held by the authority, otherwise than on behalf of another person, or
 - (b) it is held by another person on behalf of the authority.

Held by the public authority otherwise than on behalf of another person

5. When information is held by a public authority solely on behalf of another person, it is not held for FOIA purposes. However, information will be held by the public authority if the information is held to any extent for its own purposes.
6. The Upper Tribunal considered the meaning of section 3(2)(a) in the case of *University of Newcastle upon Tyne v the Information Commissioner and the British Union for the*

Abolition of Vivisection [2011] UKUT 185 ([AAC, 11 May 2011](#)). It explained that the concept of 'holding' information for FOIA purposes "is not purely a physical concept, and has to be understood with the purpose of the Act in mind". This means that information may be present on a public authority's premises (or even its IT network) but not held by the authority for FOIA purposes. To be considered 'held' for FOIA purposes, there has to be "an appropriate connection between the information and the authority".

7. Each case needs to be viewed individually to determine whether a public authority holds information for its own purposes or solely on behalf of another person. There are various factors that will assist.
8. The weight attached to each one will vary from case to case. In some circumstances, one factor may outweigh all the others.
9. Factors that would indicate that the information is held solely on behalf of another person include:
 - the authority has no access to, use for, or interest in the information;
 - access to the information is controlled by the other person;
 - the authority does not provide any direct assistance at its own discretion in creating, recording, filing or removing the information; or
 - the authority is merely providing storage facilities, whether physical or electronic.

Example

The First-tier Tribunal (Information Rights) decision in *Digby-Cameron v Information Commissioner* ([EA/2008/0010, 16 October 2008](#)) concerned a request to a local authority for a transcript of a Coroner's hearing. Although the council provided funding and administrative support for the Coroner's Service, the Tribunal decided that the council held the information solely on behalf of the Coroner. The Coroner had sole control of the information, having statutory authority (via the Coroner's Rules 1984) to determine who had access to it. The Tribunal concluded that "the decision whether or not to disclose information was for the Coroner, not the Council." It went on to say that "'ownership' of and control over this information lay both in fact and law with the Coroner."

In this particular case it was the sole control of the Coroner over the information which, having a statutory basis, was the only factor that needed to be considered.

10. The example emphasises that it is the circumstances of each case that will determine whether information is held for FOIA purposes. There will be cases when a local authority may hold information originating from the Coroner in its own right. For example, it is possible that following a road traffic accident a local authority could obtain a copy of the Coroner's report in order to consider, in its capacity as highways authority, whether any road safety measures are necessary.
11. Factors that would indicate that the information is also held by the public authority include:
 - the authority provides clerical and administrative support for the other person, whether legally required to or not;
 - the authority controls access to the information;
 - the authority itself decides what information is retained, altered or deleted;
 - the authority deals with enquiries about the information;
 - or
 - costs arising from holding the information are included in the authority's overall budget.

Example

The First-tier Tribunal (Information Rights) decision in the case of *McBride v Information Commissioner and Ministry of Justice* ([EA/2007/0105, 27 May 2008](#)) concerned a request for information from the Privy Council Office about the Visitor of the University of London. The Tribunal decided that the Privy Council Office held the information on its own behalf. Although the role of the Visitor was carried out by the Lord President of the Privy Council on behalf of the Sovereign, as the Privy Council Office performed all the administrative and management functions for the Visitor from its own budget, it held the information itself.

12. The Tribunal in the *McBride* case stated that "the question of whether a public authority holds information on behalf of another is simply a question of fact, to be determined on the evidence...."

13. It also clarified that this question is not determined by who owns the information, whether there are exclusive rights to the information or whether there is a legal basis for holding the information.
14. It is also important to note that the five factors listed above are only indicative of whether information is held by a public authority for FOIA purposes. Public authorities should not adopt an overly formulaic approach in considering whether information is held for FOIA purposes. This was confirmed by the First-tier Tribunal (Information Rights) in the following example:

Example

In the case of the British Union for the Abolition of Vivisection v Information Commissioner & Newcastle University ([EA/2010/0064, 3 March 2010](#)), the public authority argued that it did not hold the information because certain criteria were not met. The Tribunal noted that these tests appeared to derive from the decisions in *Digby-Cameron* and *McBride* and stated at paragraph 49:

“We do not accept this submission. Depending on the particular facts of a case, the features referred to in those cases may be useful matters to consider when looking at whether the public authority holds the information, but they should not be read as if they had been intended as definitive tests of whether information is ‘held’....”

15. Whilst the suggested ‘tests’ might well indicate that an authority holds information, they do not provide the whole picture. For example, where a public authority uses information for its own purposes, but there are restrictions on what it can do with the information, it will be deemed to hold the information for FOIA purposes.
16. The following are some further examples which illustrate the circumstances and factors impacting whether information is deemed to be held by a public authority otherwise than on behalf of another person.
17. Information that is held solely on behalf of another person is not held for FOIA purposes. Some examples are given below.

18. **Non-official communications within a public authority** will not be held for FOIA purposes. An example is trade union communications. The public authority has neither created the information, nor does it retain the material for its own purposes. It holds the information solely on behalf of the trade union. Similarly, in most circumstances, private emails sent or received by staff in the workplace via the public authority's email system would not be held by the authority for FOIA purposes.
19. **District auditors** appointed by the Audit Commission (even those who are officers of the Commission) exercise their powers personally and not on behalf of the Commission and are not themselves public authorities under FOIA. The Audit Commission is a public authority, but any information it holds solely on behalf of an appointed auditor is not held for FOIA purposes.
20. **Electoral Registration Officers** have a statutory duty to compile and maintain the electoral roll. **Returning officers** ensure that an election is administered effectively. These officers are not public authorities under FOIA and they exercise separate functions to those of a local authority. Any information held solely on behalf of these officers by a local authority is not held for FOIA purposes.
21. Information that is held to any extent for a public authority's own purposes will be held for FOIA purposes.
22. **A charitable trust** is a type of charity run by a small group of people known as trustees. Public authorities, usually local authorities, can be trustees of charitable trusts. They could be trustee of a public facility such as a playing field or a leisure centre, or the trustee of funds. When a local authority is the sole trustee of a charitable trust, the information is held for the purposes of FOIA. There is no distinction between the functions the local authority is performing as trustee and the functions it is performing as a local authority. A charitable trust is also not 'another person' in law. It is a legal arrangement whereby trustees act in their own name, using charity funds.

Example

In *Ian Hutchinson v Information Commissioner and Kirklees Metropolitan Council* ([EA/2017/0194](#)) 23 January 2018, the council

said that it had 'received' a surveyor's valuation report in its capacity as the charitable trustee of Clayton Swimming Bath and Recreation Centre, and not in its capacity as a local authority.

The Tribunal concluded that the information was held by the council. It said:

"The duty of a trustee to act only in the best interests of the trust when dealing with the affairs of the trust does not mean that the local authority as trustee is performing functions distinct from the functions of a local authority" (para. 23); and

"Section 139 expressly confirms the power of a local authority to receive assets and act as a charitable trust...Subsection (1)(a) refers to the acceptance by a local authority, evidently as trustee, of real or personal property for use in the discharge of its functions." (paras 26-28)

It also said "A trust is not a person in law. The only possible other person is Kirklees acting as trustee." (para. 25)

23. In certain scenarios, some information will be held solely on behalf of another person and some information will be held for a public authority's own purpose. Determining whether information is held for FOIA purposes depends on the full context. Examples are given below.
24. **Local councillors** are likely to have a number of different roles. Information will not be held for FOIA purposes if it relates to their function as elected members (for example, corresponding with residents in their ward, discussing council business with fellow members in the context of voting strategy or campaigning on behalf of a political party). However, some information will relate to the functions of the local authority and will be held for FOIA purposes (for example, being a cabinet member and having executive responsibility for a service area, carrying out administrative functions or representing the authority, such as on a regional forum).
25. **Official receivers** are statutory officers. Information that was created or obtained by an official receiver acting solely as a statutory office holder is not held for the purposes of FOIA. However, they are also civil servants employed by the Insolvency Service which is an executive agency sponsored by the Department for Business, Energy and Industrial Strategy.

When official receivers act in this capacity, any information they create or obtain is subject to FOIA. This could include information relating to staff management or where the official receiver is acting on behalf of the Secretary of State.

26. If a public authority does not hold the information requested because it is held solely on behalf of another person, it should tell the requester that it does not hold the information.
27. If information is held solely on behalf of another public authority, the [section 45 code of practice](#) advises that as a matter of good practice, public authorities should:
 - transfer the request to the authority that holds the information for FOIA purposes (NB This should only be done with the consent of the requester); or
 - inform the requester where to re-direct the request.

Held by another person on behalf of the public authority

28. There are several circumstances in which information is held by another person on behalf of the public authority and therefore held by the public authority for FOIA purposes, for example:
29. **Contracted document storage** is a relatively common arrangement and includes complex storage and retrieval systems as well as arrangements for the keeping of legal documents by a firm of solicitors. In these situations the stored documents will be held on behalf of the public authority.
30. **Local archives and record offices** will often store documents on behalf of public authorities. Even though the records offices are themselves likely to be public authorities, the responsibility for dealing with requests for the information remains with the public authority holding the information for FOIA purposes.
31. **Contractual arrangements** – where information is held by a third party as a result of a contractual arrangement, the provisions of the contract may indicate whether or not the information is held on behalf of the public authority. However, it is necessary to take account of all the circumstances of the case and consider whether there is an appropriate connection between the information and the public authority. For further information, please see our separate guidance [Outsourcing and freedom of information](#).

Example

Both the public authority and the contractor agreed that the following applied to a market research project:

“Leeds City Council and its authorised officers will have the right to inspect hard and soft copy data at any time during the contract period. Thereafter, and when the contract is spent, all hard and soft copy data must be given over to the Council, with no copy remaining – electronic or paper – external to the Council. The Council has full ownership of the data...”

The Information Commissioner decided that data generated by the contractor falling within this provision was held on behalf of the council.

[ICO Decision Notice FS50118044](#)

32. **Information held by solicitors** in connection with instructions received from a public authority client will generally be held on behalf of the public authority. However, the distinction is not always clear cut. Solicitors may hold information for their own administrative purposes, for example, which is not held for FOIA purposes.

Example

The First-tier Tribunal (Information Rights) decision in the case of Francis v Information Commissioner and South Essex Partnership Foundation NHS Trust ([EA/2007/0091, 21 July 2008](#)) concerned requested information relating to the death of the complainant’s son, which included legal advice from three firms of solicitors. The Tribunal found that information held for the solicitor’s own administrative purposes as well as the solicitor’s own working file of papers, including annotated documents, were not held on behalf of the public authority client.

33. In **other situations creating an agency arrangement**, the situation is similar to that between solicitor and client. An ‘agency arrangement’ includes anyone acting in a professional field who is recognised as acting as their client’s agent. This

may also extend to situations where another body carries out the functions of a public authority, either through statute or contractual arrangements.

34. **Partnership or consortia arrangements** are forms of collaborative working between two or more organisations. As the organisations do not have the legal status of a body or organisation separate to its members, they need to be certain what information is held on behalf of each partner or member. This will arise in the public sector when the partners, who are otherwise independent bodies, agree to co-operate to achieve a common goal, create an organisational structure and agreed programme and share information, risks and rewards. Examples include:

- local strategic partnerships
- road safety partnerships
- local environment partnerships
- economic partnerships

35. In general terms, information that is brought to the partnership by one of the partners is regarded as being held by or on behalf of all partners. As there is a variety of partnership arrangements it is not possible to provide guidance that will cover all of them. Much will depend on the individual arrangements of the partnership as to whether or not all information is held by all the partners or whether some is held by the partners solely on behalf of one of them.

Practical considerations

36. In order to comply with FOIA requirements, public authorities need to be clear about what information they hold for FOIA purposes. This means they need to be aware what information they are solely holding for another person and what information is being held on their behalf by others.
37. With regard to the former, public authorities need to know the basis on which they hold information that is in their possession, and with regard to the latter, authorities should know what information is held on their behalf by another person and also have arrangements in place which allow them to retrieve the information in the event of a request for information being made for it.

38. Good records management is important in this context. Public authorities are advised to follow the good practice which is set out in the Lord Chancellor's [code of practice under section 46](#) of FOIA. This includes, for example, a section on records that are shared with other bodies or held on their behalf by other bodies.

Other considerations

39. This guidance relates only to FOIA. Separate guidance is available relating to the EIR: [Information held by a public authority for the purposes of the EIR \(regulation 3\(2\)\)](#).
40. Additional guidance about holding information for FOIA purposes is also available:

[Determining whether information is held](#)
[When is information caught by the Freedom of Information Act?](#)
[Official information held in private email accounts](#)

More information

41. This guidance has been developed drawing on ICO experience. Because of this it may provide more detail on issues that are often referred to the Information Commissioner than on those we rarely see. The guidance will be reviewed and considered from time to time in line with new decisions of the Information Commissioner, Tribunals and courts.
42. It is a guide to our general recommended approach, although individual cases will always be decided on the basis of their particular circumstances.
43. If you need any more information about this or any other aspect of freedom of information, please contact us <https://ico.org.uk/global/contact-us/>