

Means of communicating information (section 11)

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 to comply with the duty under section 11 of FOIA regarding the means of communicating information to the requester.

Overview

- Section 11 is relevant when a public authority is providing information to a requester in response to a FOIA request. If the public authority is not providing the information because of an exemption, it is not relevant.
- It places certain duties on a public authority as regards how they provide information in response to a FOIA request.
- The requester may express a preference for having the information communicated by a particular means, namely a copy of the information, an opportunity to inspect it or a digest or summary.
- The requester must express their preference at the time of making the request.
- The preference may be for the information in a particular form eg electronic or hard copy. Where the preference is for an electronic copy, this can include a preference for a particular electronic format.
- If the requester prefers to inspect the information the public authority should make it available for inspection if it is reasonably practicable to do so.
- If the requester wants a digest or summary, the public authority must establish whether this is a request for one that already

exists, or a preference for the public authority to summarise the information.

- A digest or summary means a shortened version of all the information that is not exempt from disclosure. It does not mean a non-exempt version of exempt information.
- The public authority must make the information available by the preferred means so far as reasonably practicable. What is reasonably practicable will depend on factors such as how the information is held, the cost of complying with the preference, the public authority's resources and security.
- If the public authority is not complying with the requester's preference, they must explain their reasons. In that case they may provide the information by any means reasonable.
- The public authority may charge a fee to cover the cost of communicating the information.
- If the public authority is not communicating the information by the preferred means, it is good practice to discuss this with the requester to find an acceptable alternative.
- If the information is already reasonably accessible to the requester then it may be exempt under section 21 of FOIA. If so, section 11 does not apply.
- The public authority should be aware of any other statutory duties it may have under other legislation to provide information in other languages.
- There are provisions in section 11 regarding datasets. These are dealt with in a separate guidance document.
- If the information is environmental, public authorities must consider their duties under regulation 6 of the Environmental Information Regulations (EIR).

What FOIA says

5. Section 11 states:

11 Means by which communication to be made.

(1) Where, on making his request for information, the applicant expresses a preference for communication by any one or more of the following means, namely—

(a) the provision to the applicant of a copy of the information in permanent form or in another form acceptable to the applicant,

(b) the provision to the applicant of a reasonable opportunity to inspect a record containing the information, and

(c) the provision to the applicant of a digest or summary of the information in permanent form or in another form acceptable to the applicant,

the public authority shall so far as reasonably practicable give effect to that preference.

(1A) ...

(2) In determining for the purposes of this section whether it is reasonably practicable to communicate information by particular means, the public authority may have regard to all the circumstances, including the cost of doing so.

(3) Where the public authority determines that it is not reasonably practicable to comply with any preference expressed by the applicant in making his request, the authority shall notify the applicant of the reasons for its determination.

(4) Subject to subsections (1) and (1A), a public authority may comply with a request by communicating information by any means which are reasonable in the circumstances.

(5) ...

6. Subsections 11(1A) and 11(5) are about datasets. We have a [separate guidance document](#) on this subject.

7. Section 11 is about how a public authority should provide information that it is releasing under FOIA. It is relevant when a public authority has identified information it is going to provide in response to a request made under FOIA. If the public authority is not providing the information (because to comply with the request would exceed the appropriate limit or the request is vexatious or repeated, or the information is exempt under one of the provisions in Part II of FOIA) then section 11 is not relevant.
8. FOIA recognises that requesters may want to receive information in different ways. For example, they may prefer to have a copy of the information, in hard copy or electronic form, or they may want to come to the authority's offices and inspect the information. The ways in which the public authority provides the information are referred to as the 'means of communication'.
9. Section 11 imposes certain duties on a public authority if a requester expresses a preference for a particular means of communication. This guidance document explains when those duties arise, the extent of them and what the public authority must do to comply with them.

The preference must be expressed when making the request

10. A public authority is only obliged to comply with a requester's preference for the means of communication if the requester expresses it when they make their FOIA request. The public authority does not have a duty to comply with the preference if the requester expresses it later, either after the public authority has started to deal with the request or after it has provided the information.

Example

In the First-tier Tribunal case of [*W J Bunton v Information Commissioner \(EA/2011/0058, 9 March 2012\)*](#) ("*Bunton*"), Homes for Islington had provided some information in response to a request from Mr Bunton. During the course of subsequent correspondence, he asked for the information in a particular electronic format. The First-tier Tribunal found that, in not complying with this, the authority had not breached section 11, because he had expressed this preference after he had made his request:

"...we conclude that the Appellant did not express a preference for the form (or format) of the information he was requesting at the time he made the request. His request was made on 29 June 2008 and his expression of preference for a format was made on 29 October 2008. Section 11 FOIA is clear about the requirement to express a preference about the form in which the information is to be provided at the time of making the request." (paragraph 20)

Example

The Court of Appeal case of [*Innes v Information Commissioner and Buckinghamshire County Council* \(\[2014\] EWCA Civ 1086, 31 July 2014\)](#) confirmed this approach. In the leading judgment, Underhill LJ said that "*the natural meaning of the phrase "on making his request for information" is indeed that the expression of a preference under section 11(1) about the means by which the requested information is to be provided must be made at the time of the original request. I see no reason to strain for a looser meaning.*"

11. Where a requester has expressed a preference after submitting the original request, the public authority is not obliged to follow that preference. It can only consider the preference if the requester wishes it to be treated as a new request. This should be made clear to the requester. This will ensure that a late expression of preference does not disrupt a public authority in complying with the request within the statutory time limit.
12. However, if the requester expresses a preference at a point after they have submitted their request but before the public authority has started to do any work on it, then the public authority may use its discretion to consider the preference.

Section 11(1): choice of means of communication

13. Section 11(1) lists three means of communication for which a requester may express a preference. These can be summarised as:
 - a copy of the information,
 - an opportunity to inspect the information, and
 - a digest or summary of the information.

Each of these options is discussed in more detail below.

14. The requester is not restricted to one option. Section 11(1) refers to “one or more of the following means”. The requester may, for example, want to inspect the information and also take a copy.

Section 11(1)(a): the form of the information

15. Section 11(1)(a) refers specifically to “a copy of the information in permanent form or in another form acceptable to the applicant”. We consider this to mean that a requester can ask for a copy of the information in the form that they prefer, eg hard copy, electronic, audio tape etc.

Example

In decision notice [FS50468577](#), the requester asked the London Borough of Bexley for a paper copy of the Chief Executive’s business diary for a particular month. The council provided an electronic copy, by email, as they held the diary in electronic form. The Commissioner found that the council had breached section 11, because they had not given effect to the requester’s preference for a paper copy. They could have taken screenshots of the diary for the relevant period and printed these off. As a result of the Commissioner’s investigation, the council did provide print-outs of the screenshots to the requester.

16. A requester may express a preference to receive the information in a particular form. Where a preference is expressed for information to be provided in electronic form, this also extends to the particular electronic format. This means that a requester can express a preference for the information to be provided, for example, in Word, PDF or Excel format. The public authority must provide it in the specified form so far as reasonably practicable.
17. This interpretation is supported by the decision of the Court of Appeal in the following case:

Example

In the Court of Appeal case of [Nick Innes v the Information](#)

[Commissioner and Buckinghamshire County Council \[2014\] EWCA Civ 1086](#)), the Council had provided information that Mr Innes had requested as a series of screenshots in PDF format. Mr Innes argued that he had asked for the information as an Excel spreadsheet and under section 11(1) he was entitled to receive it in that file type.

The Court of Appeal determined that a preference for a copy of the information in electronic form means that a requester can express a preference for a particular electronic format. In the leading judgment, Underhill LJ based this, firstly (at paragraph 38), on the plain meaning of the word 'form': *"The starting point is that it seems to me a natural use of English to describe the software format in which a copy (or digest) of the requested information is provided as an aspect of its "form" Once it is accepted that an applicant can require provision of information in electronic form it seems to me only a small step to hold that he can also choose the format in which that electronic information is provided: the one naturally follows from the other"* ; and, secondly (at paragraph 39), on a purposive construction of section 11: *"Such a reading fits, as Mr Innes says, with the apparent philosophy of the Act. Citizens are given the right of access to public information at least in part so that they can make use of such information. A construction of the Act which makes it easier for them to do so effectively is to be preferred."* The Court of Appeal therefore agreed with the requester as regards section 11.

18. In view of the Innes judgment, "form" in section 11(1)(a) should be interpreted as including format. It is therefore similar to the comparable provision in regulation 6 of the Environmental Information Regulations which refers to "form or format". In our guidance on that provision we recognise that in general usage the phrase "form or format" has a wide meaning and that there is often no clear distinction between the two terms.
19. This approach also reflects the growing trend towards open data which seeks to increase the proactive publication of information by public bodies as well as improving ease of access and enhancing the re-use of information by the use of standardised, open formats. The ability of a requester to express a preference for a public authority to provide information in a file type such as CSV, for example, will allow the information to be easily re-used. However, a public

authority has no obligation to provide it in this format if it is not reasonably practicable to do so.

20. When providing information in a re-usable format public authorities should take steps to ensure that any exempt information within the underlying data is redacted in order to avoid inadvertent disclosure. If this is not done, it could mean, for example, that personal data is disclosed unintentionally. The risk of this happening occurs with spreadsheets in particular and authorities should ensure that they are prepared safely for release. For example, when data is presented in the form of a 'pivot' table where the source data is retained. If possible, CSV files should be considered instead.
21. In the same way, a preference for the information to be provided in hard copy form will include hard copy format, although in practice this is limited as there are less options for hard copy. Theoretically a requester may ask for a hard copy of the information to be provided as a photocopy or as a printed sheet. However, this would not extend to the requester being able to express a preference for how the information is set out within the hard copy form. Our interpretation of 'format' in this context is that a requester cannot ask the authority to reorganise the information. For example, to set it out under particular headings or subject categories. This does not remove the obligation for a public authority to consider the information it holds within the scope of the request and to extract and supply relevant information that is not exempt.

Example

This approach was confirmed by the Information Tribunal in the case of [*Keston Ramblers Association v the Information Commissioner and London Borough of Bromley \(EA/2005/0024, 26 October 2007\)*](#) concerning a request under the Environmental Information Regulations, specifically for copies of correspondence between the public authority and seven different bodies. The requester argued that the authority had not met its obligations in terms of form or format and should have sorted the information into seven groups, relating to the seven bodies. The Tribunal considered that 'form or format' did not mean subject categories:

"... Mr Pitt-Payne and Mr Wong submitted that the expression "form or format" is not a reference to categories of subject-matter, but is a reference to whether the information should

be supplied by means of paper copies, or electronically, or by viewing of a microfiche, and so on. We think that submission is probably correct,"

22. In terms of electronic format, the equivalent to the Keston Ramblers scenario would be a request for the information to be laid out in certain columns or rows as opposed to a request for the information to be provided in Excel format. Whereas the latter would be a legitimate expression of preference for means of communication under section 11, the former would not be. What might constitute the hard copy equivalent of a preference for a particular electronic format is not as straightforward. However, it may be legitimate for a requester to express a preference for information on expenditure by geographical area to be provided in the form of a table rather than in map form. A hard copy table comprising figures and words can be considered to be a different format to the same information portrayed in map form, as the data can be read and extracted in a different way. In other words, these are two different ways in which the information is configured or arranged within the hard copy form. If it is reasonably practicable to do so, a public authority should comply with such a preference.
23. Public authorities should note that there are more specific provisions in section 11(1A) that relate only to datasets. If the public authority holds the information as a dataset, and the requester has expressed a preference for an electronic copy, then the public authority must provide it in a re-usable form, so far as reasonably practicable. These provisions are explained in detail in our guidance document on [Datasets](#).
24. A requester may express a preference for a form in a conditional way. For example, "I would like the information in electronic form if it is in a Microsoft Office format, but if not then in hard copy". The requester cannot specify that they want the information sent to them in a particular way. For example, if the requester asks the public authority to send them the information by recorded delivery, the public authority is not obliged to do so.
25. Section 11(1)(a) does not require a public authority to provide a copy of a specific document; this is because it refers to "a copy of the information". A requester may ask for a copy of a specific document, but the public authority is not obliged to provide this as long as it supplies all the information in the document that is not exempt. In most cases the easiest way to

do this is simply to provide a copy of the document, but in other cases the public authority may provide the same information in other ways. For example, if a request is for the information on a set of completed forms, then the public authority does not necessarily have to provide copies of each of the completed forms; it may be possible to provide a blank form together with the extracted entries from the completed forms. The issue is whether the public authority has met its duty under section 1 of FOIA to provide all the information that has been requested. The duty under section 11(1)(a) regarding a preference for a particular form does not affect this.

26. The reference in section 11(1)(a) to receiving a copy of the information in "another form acceptable to the applicant", rather than in "permanent form", implies that a requester could ask for a verbal response, such as a telephone call or a meeting, rather than a written response. This is unlikely to arise very often, but if the requester does ask for this then we would advise the public authority to keep a written record of the conversation and the information that they provided, so that in the event of any complaint they can demonstrate that they have met their duty under section 1 to provide the information requested.

Section 11(1)(b): opportunity to inspect

27. Under section 11(1)(b), if a requester wants to inspect a record containing the information they have requested, then the public authority should allow them to do this, so far as reasonably practicable.
28. It should be noted that this subsection refers to inspecting "a record containing the information", not just to inspecting the information. In that case the public authority must provide access to the actual records, and not to, for example, information extracted from those records.
29. The public authority only has to comply with this preference "so far as reasonably practicable". In many cases it will be possible for a public authority to allow the requester to inspect the records on its premises during its normal business hours. This may be less practicable for a small authority that does not have its own premises.

Example

In decision notice [FS50299777](#), the requester had asked to inspect the accounts of Shotteswell Parish Council for the years 2004/2005 and 2005/2006. The Commissioner considered that this constituted the expression of a preference for a particular means of communication, ie inspection, under section 11(1)(b). The Commissioner found that in the particular circumstances of this case it was not reasonably practicable for the parish council to give effect to the requester's preference:

"... the Commissioner has decided that as the Council does not have its own premises and it is clear that a difficult relationship has developed between itself and the complainant, the Commissioner considers that it was reasonable in the circumstances for the Council to make the information available to the complainant by other means. As already noted, it appears that the complainant had already been provided with hardcopies of the accounts and they had been displayed on the notice board." (paragraph 59)

The First-tier Tribunal subsequently upheld the Commissioner's decision notice, and struck out the requester's appeal against it in [Mr Bruce Teuten v the Information Commissioner and Shotteswell Parish Council \(EA/2010/0159, 5 January 2011\)](#).

30. We consider that the intention behind this provision is that requesters should be able to inspect original records if they wish to do so. However, there may be cases where this is not reasonably practicable, and the public authority may allow the requester to inspect copies instead. Examples of this could be where the originals are particularly fragile, or where redaction is required because an exemption applies.
31. If it is not reasonably practicable to allow inspection, then the public authority must still communicate the information to the requester by other means.

Section 11(1)(c): digests and summaries

32. Under section 11(1)(c) a requester may express a preference for a digest or summary of the information, rather than a copy or an opportunity to inspect it.

33. The Oxford English Dictionary defines 'digest' as "a digested collection of statements or information; a methodically arranged compendium or summary of literary, historical, legal, scientific, or other written matter", and 'summary' as "containing or comprising the chief points or the sum and substance of a matter".
34. We consider that section 11(1)(c) refers to a digest or summary of all the information that has been requested, ie a shortened version. For example, the information requested may be a very lengthy report, and a requester may prefer to receive a shortened version, summarising the key points. It does not mean that the requester can ask for a version tailored to their particular requirements, nor does it mean that a public authority has to produce a bespoke statistical analysis of the requested information.

Pre-existing summaries and summarising information

35. It is important to distinguish between a scenario where a requester has asked for a pre-existing summary, and one where the requester has asked for information but wants the public authority to summarise it, rather than provide the full text.
36. An example of the first scenario would be where a requester asks for "the executive summary from the report on X that was considered by the management board". In that example, the question is whether an executive summary exists already. This is about whether the public authority holds the specific information that has been requested, and hence it is a section 1, rather than a section 11 issue.
37. An example of the second scenario would be where a requester asks for "the council's report on its new healthy living initiative in the form of a summary". In this case, the requester is expressing a preference for communication by a particular means. They want the public authority to summarise the information that they are interested in, so section 11 applies. FOIA does not require a public authority to create new information in order to answer a request, and so the public authority does not have to write a new summary. The question is whether they can produce a summary by extracting parts of the information that has been requested. In the example above it may be possible to cut and paste paragraphs from the report in order to produce a summary. If it is not reasonably practicable to do that, then it may be reasonable to provide the

full report instead. There is a further discussion of this in the section on 'Reasonably practicable' below.

38. If the public authority is in any doubt as to whether the first or second scenario applies, they should ask the requester whether they are requesting a pre-existing summary, or whether they want the public authority to summarise the information they hold.

Summarising to avoid exemptions

39. Section 11(1)(c) does not enable a requester to obtain a summary of information that would otherwise be exempt. The duties in section 11 only apply to information that can be released under FOIA. If the information requested is exempt from disclosure, then section 11(1)(c) does not require the public authority to produce a 'non-exempt' summary of it.

Example

In decision notice [FS50290504](#), the requester asked the Ministry of Justice (MoJ) for a summary of the key points covered in correspondence between the European Commission and the UK government, regarding alleged deficiencies in the UK's implementation of the Data Protection directive. He had previously asked for the actual correspondence, and this had been withheld under section 27. His new request was intended, as he later said in his appeal to the First-tier Tribunal, "*to allow an abbreviated, non-exempt account of the key issues to be disclosed*". The MoJ again withheld the information under section 27.

The Commissioner commented at paragraph 16 of his decision on the requester's preference for a summary:

"... whilst section 11(1)(c) provides that a public authority should give effect to the preference of a requester as to the means by which they wish the information to be communicated, it does not mean that exemptions cited should relate to anything other than the recorded information held by the public authority. In this case, therefore, the exemptions cited by the public authority relate to the recorded information from which the list and summary would be collated, rather than to information collated into the form requested by the complainant."

In other words, if a requester has expressed a preference for a

digest or summary, the public authority must consider whether any exemptions apply to the information requested, not to any summary that they would have to provide in order to meet the preferred method of communication. If all or part of the information is exempt from disclosure, the requester cannot use section 11(1)(c) to obtain a 'non-exempt' summary of the exempt information.

In the subsequent First-tier Tribunal case, the Tribunal agreed with the Commissioner's approach, although in the end their decision did not depend upon this point ([Dr C Pounder v the Information Commissioner and the Ministry of Justice \(EA/2011/0116, 27 October 2011\)](#), at paragraph 6)

Providing a summary that has not been requested

40. If a requester has asked for a copy of the information, for example a copy of a specific document, then the public authority cannot provide a summary of the document instead. This is because a request for a copy of a document is a request for all of the information contained in it. It would be difficult for the public authority to argue that it had provided all the requested information if it had only provided a summary. The issue here is whether the public authority has met its duty under section 1 to provide requested information, rather than whether it has met its duties under section 11.

Reasonably practicable

41. The public authority is required to comply with the requester's preferred means of communication "so far as reasonably practicable". Section 11(2) says that in determining what is reasonably practicable, "the public authority may have regard to all the circumstances, including the cost of doing so". The relevant circumstances could include, but are not limited to:
- How the information is held. For example, the information may be held in a document that is particularly old or fragile, and to provide a copy may damage the document.
 - The cost of complying with the requester's preference. The public authority can take into account the cost in assessing whether it is reasonably practicable to comply, but the work that would be involved in complying with the

preference does not count towards the appropriate limit in section 12. This is because the activities that a public authority can take into account in calculating whether the limit would be exceeded do not include communicating the information. The activities are listed in the [Freedom of Information and Data Protection \(Appropriate Limit and Fees\) Regulations 2004](#).

- The available resources of the public authority.
- Whether there are issues, such as security restrictions or difficulties of physical access to records stores, which would prevent members of the public from entering the public authority's premises to inspect records.

42. The following example shows how the Commissioner assessed what was reasonably practicable in a particular case.

Example

In decision notice [FS50356379](#), the requester had submitted requests to the governing body of Tidemill Primary School for information from governors' meetings, and specified that she wanted the information electronically. The governing body offered to make the information available for inspection. The Commissioner found that, as some of the information was held electronically, it would have been reasonably practicable to email that part of it to the requester. The governing body had not complied with section 11 in respect of that information.

However, the Commissioner found that the governing body had not breached their section 11 duty in respect of other information that they held in hard copy. This amounted to over 1500 A4 pages, and it would have taken several days to scan and email these documents. The Commissioner accepted that:

"...because of the large number of documents that fall within the scope of the complainant's request, it would not be reasonably practicable for the information to be provided in the requested format. This is particularly the case because of the limited nature of the technological and staffing resources available to the public authority." (paragraph 27)

Furthermore, although some of that information had originally been produced electronically, it had come from a range of sources, including individual governors' own PCs and external

bodies. The Commissioner accepted that *".. it would be difficult and time-consuming to determine which have been held or retained electronically."* (paragraph 28)

43. Arguments that providing information in the preferred form would allow unauthorised copying, and hence infringement of copyright, are not relevant to whether it is reasonably practicable to comply with the requester's preference. FOIA provides a right of access to information but not a right to re-use that information (except in relation to [datasets](#)). A public authority can take actions to prevent infringement of its copyright, but this does not affect how information should be communicated under FOIA. This is shown in the following example.

Example

In decision notice [FS50217416](#), the Student Loans Company declined to provide an electronic copy of a training manual because of concerns about copyright and confidentiality. They said that they would have to have a legal document drawn up to ensure that it was not posted on websites or reproduced without permission, and the cost of doing so meant that it was not reasonably practicable to comply with the preference for an electronic copy.

The Commissioner found that the Company had not met its duty to give effect to the requester's preference. He considered that *"...issues of possible copyright infringement fall outside the scope of the Act and that if any breaches of such legislation were to transpire then the Company should more properly address these elsewhere."* (paragraph 15)

The Company's concerns about copyright and confidentiality *"do not deal with the question of whether it would be reasonably practicable to provide the information in the preferred format. Therefore the Commissioner considers any steps the Company considers it needs to take in order to allay its concerns in relation to copyright and confidentiality can also not be taken into account."* (paragraph 18)

Section 11(3): explaining reasons for not complying with a preference

44. If the public authority decides that it is not reasonably practicable to comply with the requester's preference, then under section 11(3) they must explain their reasons for this.

Example

Decision notice [FS50423888](#) concerned a request to the Bamford Academy for copies of its staffing policies. The requester had asked for electronic copies. The Academy eventually offered to provide hard copies, and gave no explanation as to why it could not provide electronic copies.

The Academy explained to the Commissioner, during his investigation, that it was using the local authority's policies, and it only held these in hard copy; to ask the local authority for electronic copies would incur a further cost.

The Commissioner accepted that it was not reasonably practicable for the Academy to provide electronic copies. However, he found that the Academy had breached section 11(3) in failing to inform the requester of the reasons why it could not comply with their preference (paragraph 73 of the decision notice).

45. If the requester is not happy with the public authority's decision as to what is reasonably practicable they may complain and the authority should treat this as a request for an internal review of the handling of the request. If the requester is dissatisfied with the outcome of the internal review they may complain to the Information Commissioner.

Section 11(4): any means reasonable

46. Section 11(4) says that, subject to the provisions of section 11(1), a public authority may communicate the information "by any means which are reasonable in the circumstances".
47. If the public authority decides it is not reasonably practicable to comply with the requester's preference, then it may provide

the information by any other means that are reasonable in the circumstances. In the example above it was reasonable for the Bamford Academy to provide the information in hard copy.

48. This subsection also means that, where the requester has not specified in what form they would like to receive the information, it will generally be reasonable for the form to be dictated by how they have submitted their request. For example, if a requester submits their request by email, it is reasonable to assume that they want to receive the information electronically eg in the body of the email response or as an attachment, unless they specify otherwise.
49. We also consider that, if the public authority charges a fee for hard copy information, but not for an electronic copy, then it would be good practice to offer the information in the form which would not attract a charge.

Fees for communicating the information

50. The public authority may charge a fee for communicating the information, under section 9 of FOIA and regulation 6(2)(b) of the [Freedom of Information and Data Protection \(Appropriate Limit and Fees\) Regulations 2004 no 3244](#) ("the Fees Regulations"):

6.—(1) Any fee to be charged under section 9 of the 2000 Act by a public authority to whom a request for information is made is not to exceed the maximum determined by the public authority in accordance with this regulation.

(2) Subject to paragraph (4), the maximum fee is a sum equivalent to the total costs the public authority reasonably expects to incur in relation to the request in—

- (a) informing the person making the request whether it holds the information, and
- (b) communicating the information to the person making the request.

(3) Costs which may be taken into account by a public authority for the purposes of this regulation include, but are not limited to, the costs of—

- (a) complying with any obligation under section 11(1) of the 2000 Act as to the means or form of communicating the information,
- (b) reproducing any document containing the information, and
- (c) postage and other forms of transmitting the information.

(4) But a public authority may not take into account for the purposes of this regulation any costs which are attributable to the time which persons undertaking activities mentioned in paragraph (2) on behalf of the authority are expected to spend on those activities.

51. If the requester has asked for a hard copy to be sent by post, the public authority can charge a fee to cover the cost of, for example, photocopying, or purchasing removable media such as a memory stick, CD or DVD, or postage. However, the effect of regulation 6(4) is that the public authority cannot charge for the cost of staff time in communicating the information. Once it has located, retrieved and extracted the information that it is going to provide, it cannot charge for the time taken to photocopy that information, or print out screen prints or save electronic information to removable media.
52. Further information about fees is available in our guidance document on [Fees that may be charged when the cost of compliance does not exceed the appropriate limit.](#)
53. If the cost of complying with the request (not the cost of complying with the preferred means of communication) would exceed the appropriate limit, the public authority has no duty under section 1(1) of FOIA and it is not obliged to communicate the information. It may still choose to do so, and it can charge a fee under section 13 of FOIA and regulation 7 of the Fees Regulations. In that case, not only can the fee cover the cost of communicating the information, but it can also include the cost of staff time in communicating it, calculated at a rate of £25 per hour. This is explained further in our guidance document on [Fees that may be charged when the cost of compliance exceeds the appropriate limit.](#)

Other considerations

Advice and assistance

54. The duty to provide advice and assistance to requesters, set out in section 16 of FOIA and the [section 45 Code of Practice](#), does not refer specifically to the means of communicating the information. However, if the public authority is unable to provide the information by the preferred means, we consider that it would be good practice for the public authority to discuss with the requester whether they can provide the information in another form that would be acceptable. The public authority must in any case, under section 11(3), notify the applicant of the reasons why it cannot comply with their preference.

Section 21: information in the publication scheme

55. If the information is reasonably accessible to the requester, then it may be exempt under section 21, and the public authority does not have to provide it in response to the request. There may be a case where the information is already available to the requester under the public authority's publication scheme but not in the form in which the requester would prefer to receive it. If so, the public authority is not obliged to provide the information in the requester's preferred form; the public authority has no duty under section 11, because the information is exempt, and it has no duty to communicate the information in response to the request. The public authority should explain to the requester how they can access the information.

Example

In the First-tier Tribunal case of [Liam Costello v the Information Commissioner and Northamptonshire County Council \(EA/2011/0291, 3 July 2012\)](#), the requester had asked the council for a copy of the Admission Agreements between the council and another body when that body was admitted to the Local Government Pension Scheme. The council did not provide a copy because the information was available for inspection in their offices, in compliance with other legislation.

The Commissioner found, in decision notice [FS50368428](#), that the information was exempt under section 21. The council

therefore did not have a duty under section 11 to comply with the requester's preference for a copy.

The Tribunal agreed with the Commissioner that it was necessary to consider whether the information was exempt under section 21 before considering section 11 (paragraph 16 of the Tribunal decision).

Although the Tribunal accepted our approach, they found that in this case the Commissioner did not have sufficient evidence to conclude that the information was in fact reasonably accessible to the requester. They concluded that section 21 was not engaged, and therefore they did go on to consider section 11.

Translations

56. A requester might ask for information to be translated into a particular language, but a public authority has no duty to do this under section 11. The preferences to which it has to give effect in section 11(1) do not include translations. It may have a statutory obligation to do so under other legislation apart from FOIA, for example the Welsh Language Act 1993, but the Information Commissioner has no role in regulating this.

Datasets

57. There is a detailed explanation of sections 11(1A) and 11(5), which deal with datasets, in our separate guidance document on [datasets](#).

Environmental information

58. This guidance relates only to FOIA. If the information is environmental, public authorities will instead need to consider their duties under the Environmental Information Regulations (EIR). Further information on this is available in our guidance document on [Form and format of information \(regulation 6 EIR\)](#).

More information

59. Additional guidance is available on [our guidance pages](#) if you need further information on FOIA exemptions.
60. 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.
61. It is a guide to our general recommended approach, although individual cases will always be decided on the basis of their particular circumstances.
62. 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.