

Duty to provide advice and assistance (section 16)

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 that goes into more detail than the Guide, to help public authorities fully understand their obligations and promote good practice.
4. This guidance explains to public authorities what we consider to be good practice in relation to the duty to provide advice and assistance under section 16 of FOIA.

Overview

Public authorities have a duty to provide advice and assistance to individuals making requests for information under FOIA.

Public authorities should provide advice and assistance to an applicant in the following circumstances:

- to clarify unclear requests;
- to help to provide the information requested in an acceptable format;
- to narrow responses which exceed the cost limit (section 12);
- when they have refused to provide the information because it is accessible by other means (section 21) or there is an intention to publish it in the future (section 22); and
- when their request is transferred to another public authority because the information is held by it, and not by the public authority it was addressed to.

Public authorities do not have to provide advice and assistance if the request is vexatious.

What FOIA says

5. Section 16 states:

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

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

6. Section 16(1) says that a public authority should provide advice and assistance, 'so far as it would be reasonable to expect the public authority to do so', to anyone who has made or is thinking of making a request for information.
7. Section 16(2) says that if a public authority conforms to the [section 45 Code of Practice](#) in relation to providing advice and assistance, it will have carried out its duty under section 16(1).
8. There have been relatively few cases where section 16 has been considered as a main point of appeal, though in many it has been addressed as a side issue.

Example

A key case in the application of section 16 is [Berend v the Information Commissioner and London Borough of Richmond upon Thames \(LBRT\)\(EA2006/0049 & 0050, 12 July 2007\)](#).

This related to two appeals the appellant had put forward on similar requests for information relating to the sale of a piece of land by the London Borough of Richmond upon Thames.

In relation to section 16, the Information Tribunal (IT) said that "where the public authority has complied with the [s45] Code, they will be held to have fulfilled their obligations [under s16],

however, failure to comply with the Code does not inevitably mean that a public authority has breached section 16 FOIA.”

The IT rejected the appellant’s argument that by failing to initiate contact with him the public authority had breached section 16 as there is no general duty under FOIA requiring a public authority to initiate contact with an applicant; the only obligation would be under the code where a request requires clarification which was not relevant in this case.

This confirms the Commissioner’s view that the section 16(1) duty to provide advice and assistance ‘so far as it would be reasonable to expect the authority to do so’ is limited by section 16(2) to the requirements of the code. Whilst a public authority might choose to go beyond the provisions of the code it doesn’t have to do so in order to comply with section 16.

9. Generally the code is about good practice by public authorities, rather than obligations which arise through its links with FOIA.
10. Although failure to follow the code would not necessarily be a breach of section 16, where a public authority **has** satisfied the provisions of the code it will not be in breach of section 16.
11. We recommend that a public authority should treat the code as a minimum standard and go beyond its provisions as a matter of good practice.
12. More information is available in our separate [guidance on the section 45 Code of Practice](#).

Section 16 in practice

13. A public authority’s duty to provide advice and assistance is extensive and will apply to both prospective and actual applicants for information.
14. The purpose of section 16 is to ensure that a public authority communicates with an applicant to find out what information they want and how they can obtain it.
15. It is not a way for a public authority to establish a motive for the request. A public authority should be prepared to explain why it is asking for more information to avoid giving the

impression that it is enquiring into the reasons behind the request. Paragraph nine of the code stresses the importance of this:

'Authorities should be aware that the aim of providing assistance is to clarify the nature of the information sought, not to determine the aims or motivation of the applicant. Care should be taken not to give the applicant the impression that he or she is obliged to disclose the nature of his or her interest or that he or she will be treated differently if he or she does'.

16. There should be no additional burden involved because, in the majority of cases, the duty will be fulfilled by the public authority's usual customer service standards.
17. Any part of a public authority may receive requests for information. These should be passed to the appropriate person or department so they can be dealt with correctly. An authority should ensure that public facing staff can identify a request under FOIA and provide relevant advice and assistance to applicants wherever possible.
18. Members of the public may not be aware of FOIA and the general rights of access to information so public authority staff will need to draw them to the attention of potential applicants.

The duty to provide advice and assistance

19. If a public authority can deal with a request without the need to provide additional advice and assistance then no section 16 duty arises.
20. If the public authority has established that there is a duty to provide advice and assistance it should refer to the code to establish which paragraphs are relevant.
21. The provision of advice and assistance to persons who propose to make, or have made, requests for information is dealt with in Part II of the code which comprises:
 - Advice and assistance to those proposing to make requests (paragraphs 4 to 7)
 - Clarifying the request (paragraphs 8 to 11)

- Limits to advice and assistance (paragraph 12)
 - Advice and assistance and fees (paragraphs 13 to 15)
22. Because Part II of the code relates specifically to the duty to provide advice and assistance under section 16, failure to comply with this part of the code can mean a breach of section 16.

Advice and assistance to those proposing to make requests

23. A public authority may offer advice and assistance in the following circumstances:
- If someone needs to know what types of information the authority holds and the format in which it is available, as well as information on the fees regulations and the charging policy of the authority.
 - If a request has been made, but the public authority cannot regard it as a valid request because insufficient information has been provided to allow them to identify and locate the information requested.
 - If a request has been refused, for example on grounds of excessive cost and it is appropriate for the public authority to assist the applicant in the making of a subsequent request.

Example

In decision notice [FS50512601](#) Sandwell MBC relied upon the costs exemption under section 12 to withhold the information requested.

When prompted by the applicant Sandwell suggested they submit a new request for consideration specifying exactly what information they required.

The Commissioner did not accept that this response met the requirements of section 16 as it offered no advice to the complainant, but simply the opportunity to submit a fresh

request.

The Commissioner required the public authority to contact the complainant to provide advice and assistance as to how he may be able to submit a refined request which Sandwell might be able to comply with within the appropriate limit.

24. A public authority should proactively publish details of its procedures for dealing with requests for information either via its website or publication scheme. This should include:

- a contact address (including an email address where possible);
- a telephone number;
- ideally a named individual to help applicants direct their requests for information or assistance.

'Reasonable' provision of advice and assistance

25. A public authority should adopt a flexible approach and treat each application or potential application on a case by case basis. In many cases, it will be clear what advice and assistance the public authority needs to offer. In other cases, the public authority will need to liaise with the applicant to establish what advice and assistance might be appropriate, and therefore reasonable.

26. Examples of what it is reasonable for a public authority to do may include:

- advising a potential applicant of their rights under FOIA;
- assisting an applicant to focus their request, perhaps by advising them of the types of information available within the requested category;
- advising an applicant if information is available elsewhere, and explaining how to access this (for example via the authority's publication scheme); and
- keeping an applicant advised on the progress of their request.

Example

In [Decision Notice FS50502471](#) the applicant made an information request to the Home Office via the 'What do they know' website. The applicant received an automated response to say that the email address in question was not in use.

The Commissioner considered that the Home Office had breached section 16 since it did not tell the complainant where new requests should be sent.

27. Not all public authorities will be expected to go to the same lengths. The advice and assistance that it would be reasonable to expect depends upon the particular public authority in question.

Example

The Information Tribunal (IT) in [Berend v the Information Commissioner and London Borough of Richmond upon Thames \(LBRT\) \(EA/2006/0049 & 50, 12 July 2007\)](#) commented that "failure to comply with the [s45] Code does not inevitably mean that a public authority has breached section 16 FOIA" and again this was reiterated in [Brown v Information Commissioner and The National Archives \(EA/2006/0088, 2 October 2007\)](#).

In the **Brown** case the IT went on to comment that "the duty on a public authority to provide assistance and advice under section 16 is expressly qualified by the words 'only in so far as it would be reasonable to expect the authority to do so'.

It is clear from this that the advice and assistance that it would be reasonable to expect depends upon the particular public authority in question. The issue is about what it is reasonable for 'the' public authority in question to do."

In this case the IT found that it would have been reasonable for The National Archives, as a public authority whose core functions included searches, to advise the applicant to send his requests on a phased basis in order to conform with the provision under paragraph 14 of the code, which says that:-

'Where an authority is not obliged to comply with a request for information because, under section 12(1) and regulations made under section 12, the cost of complying would exceed the "appropriate limit" (i.e. cost threshold) the authority should consider providing an indication of what, if any, information could be provided within the cost ceiling. The authority should also consider advising the applicant that by reforming or re-focussing their request, information may be able to be supplied for a lower, or no, fee.'

28. The following are some examples of what we would consider good practice for a public authority to follow when providing advice and assistance:
- Make early contact with an applicant and maintain a dialogue with them throughout the process of dealing with the request by keeping them informed at every stage.
 - Design customer service policies which aid a public authority's advice and assistance duties. These should incorporate the steps outlined within the code.
 - Accurately record and document all correspondence about the clarification and also the handling of any request.
 - Give consideration to the most appropriate method of contact bearing in mind the circumstances of the applicant. It may be quicker to telephone or email the requester.
 - Discuss with the applicant the provision of information in an alternative format which they would accept, in cases where it is not possible to provide the information requested in the manner originally specified.
 - Be prepared to provide advice and assistance to an applicant who has had their request turned down on the basis of an exemption.

Forming a written request

29. A public authority should use its discretion in deciding what level of advice and assistance is appropriate for applicants who have difficulty in making or framing a written request for whatever reason.

30. In these circumstances a public authority may, for example:
- take a note of the application over the telephone, and then send the note to the applicant for confirmation and return, at which point the statutory time limit for reply would begin;
 - direct the applicant to another agency that may be able to assist in framing their request (such as a Citizens Advice Bureau).
31. Clearly this is not an exhaustive list and public authorities need to consider what advice and assistance is most appropriate in the circumstances.

Clarifying the request

32. A public authority is entitled to ask for more detail, if required, to identify and locate the relevant information, if the request is not clear from the outset.
33. Our guidance on [Interpreting and clarifying requests](#) provides further information on what a public authority should consider when interpreting a request, and when it should ask the requester for clarification.
34. If a request appears clear however, there is no need to contact the applicant for further clarification.

Example

The First-tier Tribunal (FTT) decision in [Michael King v the Information Commissioner \(EA/2010/0126, 4 January 2012\)](#) concerned a request submitted to the Information Commissioner's Office (ICO) for information held by the ICO about Crawley Borough Council's non-compliance with FOIA.

The ICO provided the requested information in the form of a synopsis of each case plus redacted case closure letters written by the ICO. A disagreement then arose as to what had actually been asked for and a formal complaint was raised via the ICO and ultimately appealed to the Information Rights Tribunal.

The complainant sought to argue that, as the authority (in this case the ICO) had interpreted his request differently from his

intention, they had a duty to provide advice and assistance under section 16.

At §39 the FTT adopted the view of the Information Tribunal (IT) in [Berend v the Information Commissioner and London Borough of Richmond upon Thames \(LBRT\) \(EA/2006/0049 & 50, 12 July 2007\)](#) (at §86) that a request should be read objectively by the public authority and said that "there is no requirement to go behind what appears to be a clear request".

In this case, the FTT concluded:

"68. We found that the text of the request was clear and adequately specified the information sought. Therefore we do not see why the Commissioner would have needed to clarify what it meant...

69. Accordingly, we find the Commissioner conformed with the Code of Practice and so did not breach section 16."

This means that where the request is clear there is no need for the authority to exercise its right to seek clarification under section 1(3), and therefore no duty under section 16 to provide advice and assistance to help the requestor provide that clarification (as set out in the [section 45 Code of Practice](#) paragraph 8).

35. The duty to provide advice and assistance under section 16 relates to clarifying requests, not to clarifying material provided in response to requests.

Example

This is further explored in the First Tier Tribunal (FTT) decision [Nick Innes v Information Commissioner \(EA/2009/0064, 5 May 2011\)](#).

The appellant had made a series of requests seeking information on pupils' progress at the school. He said that the information he was provided with could not be understood without an explanation and argued that the public authority was under a duty to provide one under section 16 via paragraph 10 of the code.

The FTT found that paragraph 10 was aimed at helping

applicants identify the information they sought and was not a more general duty to provide explanations of the information requested.

Paragraph 10 of the code says that:-

'Appropriate assistance in this instance might include:

- providing an outline of the different kinds of information which might meet the terms of the request;
- providing access to detailed catalogues and indexes, where these are available, to help the applicant ascertain the nature and extent of the information held by the authority;
- providing a general response to the request setting out options for further information which could be provided on request.

This list is not exhaustive, and public authorities should be flexible in offering advice and assistance most appropriate to the circumstances of the applicant.'

Section 16(2) makes it clear that the obligation to provide advice and assistance is limited to that set out in the code and is restricted to 'so far as it would be reasonable'. The FTT did not consider that it would be 'reasonable' for public authorities to have to explain the information that they disclose:

"There are numerous circumstances where e.g. technical or scientific information is disclosed which is meaningless to the requestor, without an explanation. It may be that an explanation is not held and one would have to be created especially for the requestor for the public authority to fulfil any perceived obligation to explain the data. This goes beyond the terms of section 1(b) FOIA which provides for the communication of information where it is held, and nothing else."

36. In cases where a public authority can clearly identify some elements of a request it should respond in the usual way, and provide advice and assistance for the remainder of the request.
37. For the remainder of the request, the public authority should ensure that there is no undue delay in asking for clarification. This is emphasised in Part II paragraph 9 of the code which states, '...it is important that the applicant is contacted as soon as

possible, preferably by telephone, fax or e-mail, where more information is needed to clarify what is sought.'

Limits to advice and assistance

38. If an applicant decides not to follow the advice and assistance provided and fails to clarify a request, there is no obligation for the public authority to contact the applicant a second time.
39. However, if there is any doubt whether the applicant actually received the advice and assistance, good practice would be for the public authority to re-issue it.
40. This is one of the reasons why it is sensible for a public authority to keep a record of all the advice and assistance provided.

Cost limits

41. FOIA contains a provision for a cost limit for complying with requests. If the cost of complying with a request exceeds this limit then a public authority is not required to provide the information.
42. A public authority may however want to think about whether there is any information that it can provide free of charge if the applicant refuses to pay any fee required. There have been numerous [decision notices](#) issued where a public authority has been found to breach section 16 because of its failure to do so.
43. Our guidance on [requests where the cost of compliance with a request exceeds the appropriate limit](#) explains what a public authority should consider in these circumstances and how it can provide advice and assistance to help an applicant narrow, reform or refocus their request, although there will be occasions where there are no obvious alternative formulations of the request.

Example

The case of Commissioner of the Metropolitan Police vs Information Commissioner and Donnie Mackenzie (GIA/3424/2014 [\[2014\] UKUT 0479 \(AAC\)](#), 22 October 2014) concerned a request originally made to the Metropolitan Police

Service (MPS) for information about joint agency operations.

MPS refused the request on the grounds that compliance would exceed the cost limit. MPS also informed the complainant that it was unable to suggest any practical way in which his request could be modified to bring it within the cost limit.

The Commissioner issued a Decision Notice upholding the refusal on costs grounds and finding that MPS had complied with its duty to advise and assist.

On appeal the First-tier Tribunal (FTT) found that MPS should have provided advice and assistance to enable a refined request to be made.

MPS then appealed to the Upper Tribunal (UT) requesting more general guidance on the meaning and extent of section 16. The UT responded by saying that the explanation of the FTT in [Beckles v Information Commissioner EA/2011/0073 & 0074](#) "represented an accurate statement of the law", namely:

"S.16 requires a public authority, whether before or after the request is made, to suggest obvious alternative formulations of the request which will enable it to supply the core of the information sought within the cost limits. It is not required to exercise its imagination to proffer other possible solutions to the problem".

The UT said that the FTT's finding in relation to section 16 FOIA in this case was "unsustainable on the evidence before it" (paras 21-24) and that the adequacy of the FTT's reasoning was insufficient (paras 25-26).

The UT therefore allowed the appeal. It agreed with the Commissioner that it should remake the decision rather than remit the appeal to a freshly constituted FTT for a re-hearing (paras 28-30).

In doing so it dismissed the complainant's appeal and upheld the Commissioner's original decision notice [FS50503796](#) (paras 31-43).

Means of providing information

44. A public authority should generally provide the applicant with the information they have asked for in the format they have requested, for example if an applicant asks for information in a CD-ROM format.
45. However, there may be occasions when this will not be reasonably practicable. If this is the case, a public authority should assist the applicant by discussing other formats it can provide, which may be acceptable.
46. Our guidance on [means of communicating information](#) provides more detail on this subject.

Exemptions

47. A public authority should as a matter of good practice provide advice and assistance if the reason behind any refusal is because it is [information reasonably accessible to the applicant by other means \(section 21\)](#) or [information intended for future publication and research information \(section 22 and 22a\)](#) however this is not a requirement of the code.
48. A public authority should advise an applicant how and where information can be obtained, if it considers that it is reasonably accessible to them by other means.
49. Similarly, where there is an intention to publish the requested information in the future, a public authority should indicate clearly to the applicant when publication is expected.
50. Further guidance on exemptions can be found in the [Guide to freedom of information](#) on our website www.ico.org.uk.

Vexatious requests

51. The code says that a public authority is not expected to provide assistance to applicants whose requests are vexatious within the meaning of section 14.
52. Although requests may initially be considered vexatious, this does not necessarily prevent a public authority from offering advice and assistance.

53. Our detailed guidance on [dealing with vexatious requests](#) provides additional information.

Failure to provide advice and assistance

54. Applicants cannot be expected to have a detailed grasp of the law. The fact that an individual has not raised a possible breach of section 16 does not mean that the Commissioner won't consider it either in a decision notice or the way he investigates a case.
55. A public authority should remember that under section 50 (4) of FOIA the Commissioner can specify steps directing a public authority to provide advice and assistance where he has found a breach of section 16 in relation to the complaint in question.

More information

56. This guidance relates only to FOIA. If the information is environmental, a public authority will instead need to consider our [guidance on regulation 9 of the EIR](#).
57. Additional guidance is available on [our guidance pages](#) if you need further information on the public interest test, FOIA exemptions, or EIR exceptions.
58. 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 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 Commissioner, Tribunals and courts.
59. It is a guide to our general recommended approach, although individual cases will always be decided on the basis of their particular circumstances.
60. 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.