Reference: [FPR0987687]

Freedom of Information Act 2000 (Section 48) Practice Recommendation

Attorney General's Office

25 June 2025

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Information Commissioner's Office

Reference: [FPR0987687]

Summary

The Commissioner is concerned that the Attorney General's Office (AGO) has failed to treat a request from a journalist in an applicant-blind manner.

A narrative of the requester's experience can be found in the relevant tribunal decision[1]. The requesters views on their wider experience of using FOI as a journalist can be found in a blog they published after their First Tier Tribunal hearing[2].

The content of internal AGO correspondence provided to the Commissioner's staff has prompted further consideration of this matter.

The AGO must demonstrate that they recognise the issues in their handling of this request and that they have taken or will take steps to ensure that all requesters, regardless of their job, receive a high standard of response.

Reasons for issuing this practice recommendation

Applicant-blindness can be considered in two ways:

Process-oriented: is person A's request handled in the same way as person B's?

Result-oriented: does person A's request receive the same quality of response as person B's?

The focus of this practice recommendation is on result-oriented applicant-blindness. Journalists' requests are often handled differently from requests made by other members of the public. Public authorities need to plan their communications activities and media relations efficiently and effectively. Furthermore, practitioners handling a request from a journalist, which they assume will lead to media coverage, might wish to discuss their approach with subject matter experts, members of their community of practice, or legal counsel. In short, a journalist's request may pass through more hands, but must receive the same quality of response as a request from anyone else.

[1] George Greenwood v The Information Commissioner - Find Case Law - The National Archives

[2] What happens when an FOI is selected for special treatment: intel gathering and obfuscation – Relight My FOIA

Some aspects of the internal AGO correspondence are of concern to the Commissioner regarding the underlying culture at the AGO in relation to transparency and its approach to the requestor blind principle. This is particularly significant given the AGO's role supporting compliance with the rule of law across the government.

In the case we have seen, the requester received two refusal letters from the AGO relating to the same request. The first cited section 14(1). During the ICO complaint-handling process, AGO also cited section 12(2). The second refusal letter to the requester from the AGO cited section 12(1). The internal AGO correspondence of particular concern to the Commissioner discusses the drafting of the second response letter and includes lines like:

"…it's worth reiterating the aims behind the letter. I think we have three aims here: (i) maximize the delay in providing the final number, (ii) 'admit' the fact we hold information but do so in the most limited way possible, and (iii) do both without creating something easily quotable in a newspaper. So that's the approach taken in the letter and why it is necessarily short."

Point (i) of this email strongly implies that the AGO anticipated their refusal would be overturned, and aimed to delay the publication of information that it believed it should release under FOIA. While not speculating on the reasons for this, it is highly concerning behaviour for an organisation with the AGO's role and remit to take this approach.

Points (ii) and (iii) of the email suggest that the response was not drafted with the intention of increasing transparency in the interests of the general public. These failures spring from the decision to limit not only the disclosure of information which fell under the scope of the request, but also the length and wording of the response letters themselves. This was in order to frustrate any potential journalistic use of the text. This exceeds any reasonable variations from the norm which might occur in the handling of a request from a journalist, and crosses over into a result-oriented failure of applicant-blindness. In their anxiety about providing information which the requester might write about, the AGO did not provide appropriate advice and assistance. The reference to not creating something 'easily quotable in a newspaper' makes it clear that the quality of the response the requestor received was likely to be affected by their status as a journalist. This is a breach of the applicant-blind principle beyond simply putting in place an appropriate handling strategy for a high-profile request.

In addition, similar comments that raise concerns appear throughout the correspondence regarding the handling of the request such as:

"We could probably draft in a way that is entirely un-useful for a newspaper article"

And

"our strategy of being as limited as possible"

In the Commissioner's view, this is a clear failure to comply with the requestor blind principle.

It is also of concern, given the role of the AGO in supporting the Government's compliance with the law, that at one point there is an implication of uncertainty about the ownership of the response and its handling when it is noted at what point: 'what's trickier is that HO Spads/No.10 may wish to spin this".

One minister also interjects during clearance processes to recommend removing material that would be relevant to the department's duty to provide advice and assistance, such as including prompts about refining a request to come under the S.12 cost limit and how this could be achieved.

These are all matters of concern in relation to the AGO's compliance with both FOIA and its Codes.

The AGO should not delay the provision of information to the public when exemptions do not appropriately apply merely because it is politically sensitive. They should not require the Commissioner and then the Tribunal to instruct them to disclose information which they know they should disclose. This is a waste of their own, the Commissioner's, the Tribunal's and ultimately the taxpayer's limited resources.

This practice recommendation formalises the Commissioner's concerns and holds the AGO accountable for improving its FOI request handling practices and, in turn, increase public confidence and trust in its information rights practices.

Recommendations

Area of Code	Non-conformity	Recommendation of steps to be taken
Part 4 – Time limits for responding to requests Section 4.1 of the Code highlights the "clear" requirement that public authorities respond to requests for information promptly, and within 20 working days of receipt in accordance with section 10(1) of FOIA.	Internal AGO correspondence states the aim of 'maximising the delay' in disclosing information requested under FOI. Compounding this is the fact that this statement was made regarding the drafting of a second response to the initial information request. The AGO had been instructed to issue that second response by an ICO decision notice. This means the AGO had already passed up numerous opportunities to disclose the information. It is clearly not in the spirit of the act that a request made at the end of 2022 for information that should have been released at the time does not result in disclosure of information until 2024. Not all of the delay is attributable to AGO - some of it is a result of the nature of the appeal system up to and including the Commissioner and Tribunal. But this is why timely and lawful first instance request-handling is so important.	**1.** The AGO should ensure that requests for information are responded to in a timely manner. **2.** The AGO must satisfy itself, the Commissioner and the public that the organisation has a culture of openness and transparency. The Commissioner's open letter to senior leaders is a good starting point. The Commissioner will be keeping future complaints he receives about AGO under review for any indications of similar issues. **3.** Staff who handle information requests at the AGO must receive adequate training, and that training should be refreshed periodically. ICO training videos may be helpful as a starting point.

Part 2 - Advice and assistance Section 2.01 of the code sets out the general duty on public authorities to provide reasonable advice and assistance to applicants requesting information. Section 2.10 of the code states that in particular, public authorities should provide advice and assistance to help requesters reframe their requests to bring them within the cost limit.	It is the Commissioner's view, drawn from internal AGO correspondence provided to his staff, that the requester's identity as a journalist led the AGO to provide guarded, minimal responses, which did not provide appropriate advice and assistance. The AGO failed to advise the complainant on how they might narrow their request so that it could fall within the cost limit. Senior figures requested that such advice was removed, and it is unclear the extent to which they were advised on the statutory duties in FOIA in this regard.	**1.** The AGO must consider its approach to requests from journalists and satisfy itself that reasonable efforts to manage media and comms activities do not impinge on the provision of advice and assistance. **2.** AGO staff handling information requests should review relevant guidance on the ICO website: Section 16 – Advice and Assistance **3.** The AGO should conduct a lessons-learned exercise regarding this request. In particular, the AGO should consider whether journalists who make requests to the AGO routinely receive less explanation, and less advice and assistance than other requesters, and take any necessary corrective action.

Part 6 - Cost limit Section 6.3 of the Code sets out the three activities which public authorities may include in their calculations when estimating whether responding to a request would breach the cost limit. Section 6.7 of the Code states that, when estimating the cost of responding to a request, "public authorities are not under any obligation to make a precise calculation although estimates should be sensible and realistic." Section 6.9 of the code re-states that where a request is refused under section 12, public authorities should consider what advice and assistance can be provided to help the applicant reframe or refocus their request with a view to bringing it within the cost limit.	The AGO's application of section 12 has been dealt with in the relevant decision notices and tribunal case. However, the Commissioner saw that the AGO's response to the requester lacked sufficient cogent evidence in support of the reasonableness of its estimate. It is not a statutory requirement to explain how an estimate has been calculated, but it is beneficial to enable the requestor to assess the reasonableness of the estimate. This might in turn help them to reframe their request in a way which can be responded to without exceeding the appropriate cost limit, thereby facilitating the disclosure of information to the general public.	**1.** The AGO should ensure that it does not use section 12 inappropriately to refuse requests for information which can be located and disclosed without exceeding the appropriate limit. **2.** The AGO should consider completing the ICO's Section 12 self-assessment toolkit.

Part 7 – Vexatious requests Section 7.14 of the Code states that public authorities should avoid using section 14 for burdensome requests unnecessarily. They should consider whether section 12 applies in the first instance. If locating and extracting the information in scope would exceed the cost limit, section 12 is likely to be most appropriate.	In their initial refusal of the request as burdensome, issues which would later be seen in the application of section 12 (1) and then section 12 (2) were also present. Having conducted an internal review, the AGO confirmed that the burden of complying with the request "is such that it means it is vexatious," without providing a valid explanation as to how it reached that conclusion. This risks the impression that section 14 is being used as an easier way to shut down awkward requests, lacking as it does the more detailed considerations required by reliance on section 12	**1.** The AGO must satisfy itself that applications of S.14 are well evidenced, particularly when the request is vexatious due to burden. **2.** The AGO should complete the ICO's Section 14 self-assessment toolkit.

Failure to comply

A practice recommendation cannot be directly enforced by the Commissioner. However, failure to comply with a practice recommendation may lead to a failure to comply with FOIA, which in turn may result in the issuing of an enforcement notice. Further, a failure to take account of a practice recommendation may lead in some circumstances to an adverse comment in a report to Parliament by the Commissioner.

The AGO should write to the Commissioner within 3 months to confirm that it has complied with its recommendations and how it has achieved this.

The Commissioner will have regard to this practice recommendation in his handling of subsequent cases involving the AGO.