



The Freedom of Information Act

A Guide to Initial Preparation

I know FOI is coming and I'm looking for a brief introduction to the Act and some help with beginning to prepare in time for January...



Photograph Courtesy of University Archive

Contents

What is Freedom of Information?	3
What should we be doing as a department?	4
What do I have to do?	6
I'm busy – why should I bother with this?	7
What help will be available?	8
Where can I find out more?	9
Appendix 1: What is involved in answering an enquiry?	10
Appendix 2: What are the exemptions?	11

What is Freedom of Information?

The Freedom of Information Act 2000 comes into full force from January 2005. It provides a statutory right of access to all information held by public authorities (universities, the government, local councils, schools, hospitals etc).

Requests for Information

Under the Act, any individual or corporation (whether or not they are resident in the UK) has the right to ask if the information they seek is held by the University. If it is, they then have the right to have that information communicated to them. The request has to be in writing (letter, email or fax), give the applicant's name and address



(email or postal) and outline the information sought. Applications do not need to cite the Act to be valid. Any written enquiry for information received by the University and its staff falls under the Act. Enquiries will have to be responded to either by constructing a specific written reply (see p. 10) or by referring the enquirer to the University's Publication Scheme (see below).

The University has a maximum of 20 working days from receipt of the enquiry to provide the information requested. It may charge for a proportion of the costs it will incur in making the information available and there is a variety of exemptions which will prevent the disclosure of some information (see p. 11), Exemptions are either absolute or

qualified (where there is a qualified exemption, a public interest test must be applied). The clock can be stopped on the twenty working day limit if the request is ambiguous (it stops until clarification is received), if a fees notice is issued (until payment is received) and in some cases where the public interest test has to be applied. In all circumstances, the University has a duty to provide applicants with help and assistance to pursue their request for information.

University Publication Scheme

Under the Act, the University is required to maintain a publication scheme. This is a record of all those classes of information that the University is committed to making available automatically on request. It is anticipated that the majority of FOI enquiries will be answered through the Publication Scheme. Much of this information will be freely available on-line, some on demand in paper format. Fees will be charged for everything involving staff time in preparation, which will include most paper print-outs. The publication scheme will help answer most routine enquiries for information and its usefulness will grow as more policies, procedures, minutes and documents are made available through it and on the web. York's publication scheme can be found at <http://www.york.ac.uk/recordsmanagement/foia/>. The scheme will be updated regularly in response to your needs and to the types of information commonly requested.

What should we be doing as a department?



In many cases Freedom of Information should not involve much extra work for departments. This will be particularly true where existing procedures for answering enquiries and good records management mean that current practices meet FOI requirements. Most enquiries will be for routine information and can be dealt with following existing procedures. Moreover, the University continues to anticipate requests, making more information available automatically through its Publication Scheme and on the web (with due reference to data protection!).

The Publication Scheme will not only reduce the impact of enquiries but is an important resource to help you find where information is held and answer information requests.

Freedom of Information has to be a group effort. A lot will rely on wider systems and we must all take some responsibility for the information we hold and manage (see p. 6) but, given the wide range of information that is created and held across the University, we cannot hope to respond efficiently, effectively or fairly unless some common thought is given to the information we hold and there is effective communication between everyone.

The most useful first step any department can take is to start discussing the issues.

- Raise awareness of the Act – among all staff.
- Familiarise yourself with the University's Publication Scheme (can you add to it and help anticipate requests by publishing more proactively?).
- Consider what information you hold as a department and the requests you already get (types, volume, how and where they arrive).



- Audit your current procedures for dealing with requests. Where existing procedures for certain types of request meet the basic requirements of the Act (i.e. information provided in 20 days) there will be little or no need to change or add to current practice. Only where the request is complicated by its size, complexity or the possible application of exemptions will a new process be required. The FOI guidance will help here.
- Identify someone who can handle and distribute enquiries that come to the department, whom others dealing with FOI (inside or outside) the department can contact, and to whom information/training can be disseminated. The person should have a good knowledge of your department's records and systems and be in a position to receive and disseminate information and training.

- Begin to think about requests and their arrival after January (how, where, who; date-stamping?).
- Consider how you will deal with staff absences: in terms of accessing requests and information speedily and effectively (automatic email replies, departmental email address, shared drives, web publishing).
- Be careful when agreeing to or formulating contractual obligations – thought must be given to the justification of any confidentiality clauses (which should be avoided if possible). The Information Commissioner has issued specific advice on contracts (www.informationcommissioner.gov.uk).
- Consider creating a list of contacts in other departments/sections of the University which you can use to contact an appropriate person for assistance or transfer an enquiry quickly. The list might also include organisations outside the University with whom you share information or who hold information about you/your activities.

And remember, when thinking things through:

- Step back from it all and break it into realistic ‘chunks’. There is only so much we can anticipate now and, while the number of requests will rise over time, this is likely to be in step with everyone’s learning curve.
- If assessing risks, try to do so realistically. It’s easy to think of nightmare scenarios, but base any preparation on a balance of probabilities.
- Further detailed guidance will be made available separately, including responses to your FAQs and resources such as forms, templates and stock paragraphs for letters. Advice, training and support will be made available and other sources of information are given at the end of this booklet.

What do I have to do?

For those dealing with requests, support and more detailed guidance on enquiry handling will be available from the University Records Manager, who is the University's FOI and Data Protection Officer.

However we all have a role to play in supporting FOI, even if we are not the ones answering enquiries. We should all **be aware of the Act** and every member of staff should be able to **recognise a Freedom of Information request** so that its status is clear and it can be answered or passed to the appropriate person quickly and effectively.

If you are not the right person to answer an enquiry, you should be aware of who within your department is Departmental email addresses will help catch and distribute most enquiries quickly, but some enquiries will inevitably be sent directly to individuals or to departments via less predictable, more roundabout routes.



Keeping your records accessible and in good order, participating in the records management programme and making sure that your absence doesn't prevent others from accessing information (e.g. because you have the only key to the filing cabinet or are the only one who knows where something is) is not only good practice but will also be a vital contribution we can all make. Bear in mind though that issues of accessibility should be balanced with the security needs of the Data Protection Act. As a rule, are your records complete, accurate and accessible?



"I have some paperwork to catch up. If I'm not back in two days, organize a search and rescue team!"

I'm busy – why should I bother with this?

- a) It's the law!
- b) It's an opportunity . . .
 - to open this and other institutions to you
 - for us to create new resources and enhance the quality and flow of information, from which we can all benefit
 - to think about information needs in a broader, more 'joined up' way
 - to promote good record keeping
 - to have more advice and support on best practice, with the guidelines and tools to achieve it
 - to stop the proliferation of unilateral responses to a growing raft of information legislation - drawing together our responses to Data Protection, Environmental Information Regulations, the Cooke Report, research data quality assurance, internal audits etc
- c) If we get it right at the start it will be easy to cope with. Avoidance and fudges at this stage will only lead to risk, potential embarrassment and going back to square one later.
- d) It takes more effort fighting it than accepting it and getting behind it.
- e) People will make use of the Act. Students, the press and media, competitors and the general public all have a keen interest in what we do and will want to make use of the Act's powers. We should, of course, remember that we can make use of them too!
- f) The Information Commissioner can issue enforcement notices (which could, for example, relate to disclosure decisions/actions, enquiry handling procedures, or record-keeping standards). As well as naming and shaming the University, if it did not comply with such a notice it could be held in contempt of court and be prosecuted accordingly. It is also a criminal offence for anyone to tamper with existing records that have been requested for disclosure. Significantly, this offence is covered by personal liability so if an individual is caught tampering with such documents, the individual involved and not the University will face prosecution.
- e) Everyone else is. Can you afford to be left behind?

What help will be available?

The University Records Manager, Charles Fonge (cf13@york.ac.uk), is the Freedom of Information Officer for the University and also has responsibility for Data Protection, Records Management and the University Archive. With the Archives and Records Management Group of the Information Committee, he will be producing the following resources to aid implementation and this will be followed by further training, building on the earlier FOIA briefing session and recent AUA event.

The records management website (www.york.ac.uk/recordsmanagement) will host dedicated pages for FOI and the DPA. Through these you will be able to access:

- An interactive enquiry handling procedure: a step-by-step guide to handling and responding to enquiries
- Frequently Asked Questions: responses to questions raised by staff
- Guidance on specific issues (fees, contracts, copyright, the fit with Data Protection and the Environmental Information Regulations)
- Specific resources: (templates, stock phrases for letters, decision trees).

There will also be pages for the general public through which they can access an enquiry pack, the complaints procedure, and the publication scheme.

The records management programme, under the aegis of the University's Records Management Strategy (<http://www.york.ac.uk/recordsmanagement/rm/strategy.pdf>), will be producing:

- a records management policy (defining basic responsibilities and providing a framework for guidance);
- retention schedules/advice;
- a purpose-built archive facility for departmental and research records;
- on-going training on record-keeping and wider compliance issues.

Where can I find out more?

University's Publication Scheme: <http://www.york.ac.uk/recordsmanagement/foia/>

JISC: http://www.jisc.ac.uk/index.cfm?name=pub_ib_foi
(briefing paper)

http://www.jisc.ac.uk/legal/index.cfm?name=lis_fo_i_rjbrief (another overview)

Information Commissioner's Website: <http://www.informationcommissioner.gov.uk/>

Includes:

- Awareness guidance on exemptions, personal information, public interest tests, timing etc:
- Data Protection
- Environmental Information Regulations

<http://www.informationcommissioner.gov.uk/evntual.aspx?id=1024#Awareness%20Guidance>

Department of Constitutional Affairs <http://www.dca.gov.uk/>

- Statutory Codes of Practice on Handling FOI Requests and Records Management
- Guidance on FOI Procedures and Exemptions

<http://www.dca.gov.uk/foi/understand.htm>

<http://www.dca.gov.uk/foi/guidance/index.htm>

Data Protection Code of Practice for HE and FE

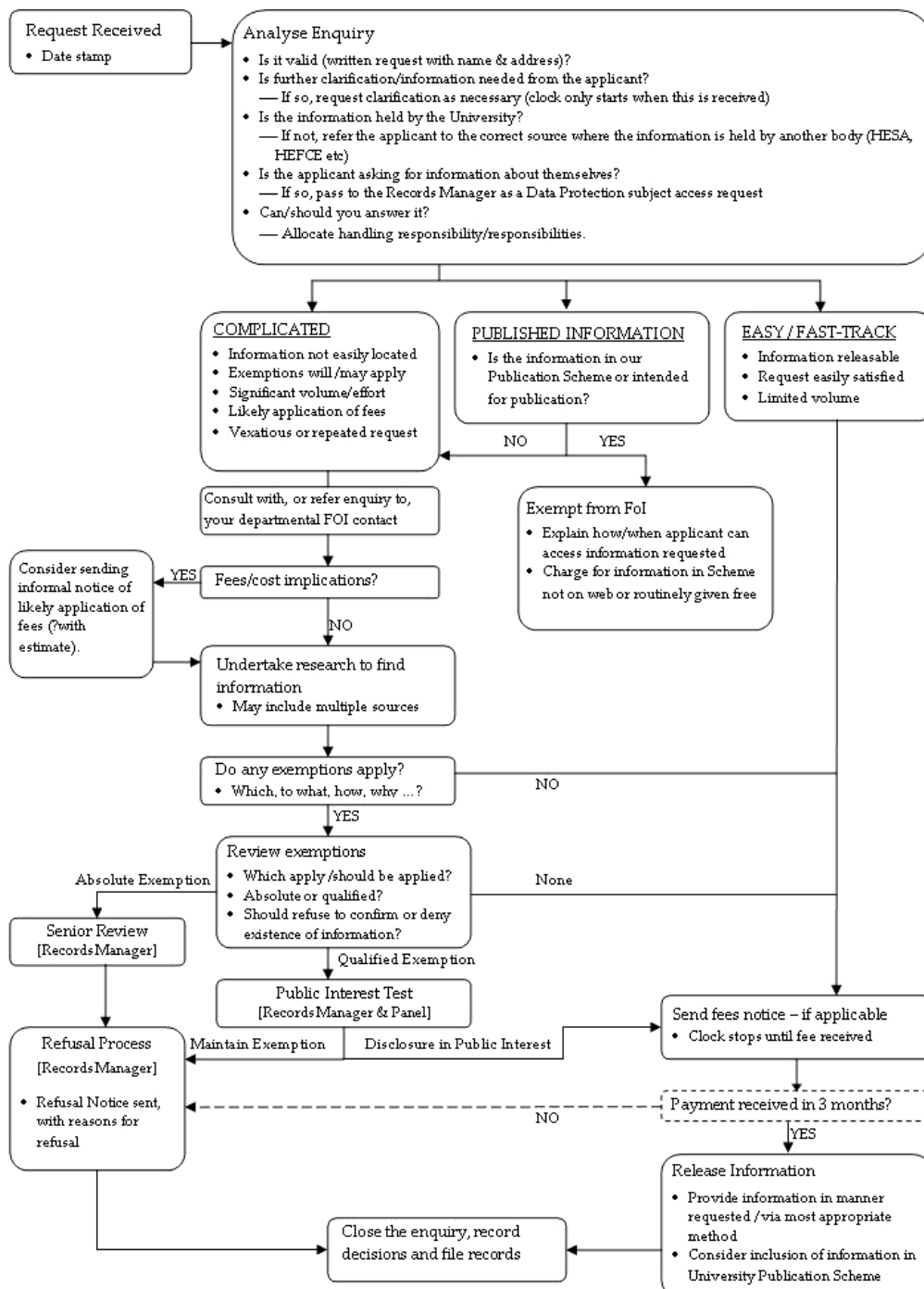
http://www.jisc.ac.uk/index.cfm?name=pub_dpac_op_0101

Appendix 1: What is involved in answering an enquiry?

The chart below provides an overview of the whole enquiry process and includes information for a variety of circumstances (step by step guidance based on the chart's processes will be issued separately for those dealing with requests). In the main, however, the procedure will involve 5 key stages:

- Receiving and identifying the enquiry
- Finding the information
- Assessing if exemptions/fees apply
- Releasing the information/Refusal process
- Keeping a record of your enquiries and decisions.

FoI Enquiry Handling Process



Appendix 2: What are the Exemptions?

Where an exemption is 'qualified' a public interest test has to be carried out as to whether it is in the public interest to maintain the exemption. Having decided whether an exemption applies within the 20 days, the public interest test can be performed outside the 20 day time limit, although extra time here must be reasonable, justified and the applicant supplied with an estimate for the date of a final decision.

If a department decides that an exemption is relevant and should be applied, it will pass details of the exemption(s) it wishes to claim to the Records Manager. These will be reviewed by the Records Manager (who will also oversee the Public Interest Tests, in consultation with departments and relevant staff) in order to achieve consistent interpretation and application. Where a decision to apply or maintain an exemption is made, the Records Manager will write the refusal notice.

The exemptions in bold are the most likely to apply to information held by the University. The numbers in brackets refer to the relevant section of the Act.



Qualified Exemptions

- **Information intended for future publication** [in the Publication Scheme or by other means] (s.22)
- National security (s.24)
- Defence (s.26)
- International relations (s.27)
- Relations within the UK (s.28)
- The economy (s.29)
- Investigations and proceedings (s.30)
- Law enforcement (s.31)
- Audit functions (s.33)
- Formulation of government policy (s.35)
- Communications with her Majesty (s.37)
- **Health and safety** [to protect the health or safety of individuals] (s.38)
- **Some personal information** [where disclosure will not breach the data protection principles or cause distress] (s.40)
- **Legal professional privilege** (s.42)
- **Commercial interests** [of the University or any organisation/individual; including trade secrets] (s.43)



Absolute Exemptions

- **Information accessible by other means** [e.g. the Publication Scheme] (s.21)
- Information supplied by or relating to, bodies dealing with security matters (s.23)
- Court records (s.32)
- Parliamentary privilege (s.34)
- Prejudice to effective conduct of public affairs (s.36)
- **Information that constitutes personal data of which the applicant is the data subject** [dealt with under Data Protection Act as now] (s.40.1)
- **Information provided in confidence** [where disclosure would be an actionable breach] (s.41).
- **Information whose disclosure is prohibited by law** (s.44)

© University of York, October 2004 (v. 1.0).

Further copies of this booklet are available from Charles Fonge, the University
Records Manager and can be downloaded from
<http://www.york.ac.uk/recordsmanagement/>