

WEST YORKSHIRE FIRE AND CIVIL DEFENCE AUTHORITY

GUIDANCE NOTES FOR MEMBERS

THE FREEDOM OF INFORMATION ACT 2000

1 The Act

- 1.1 The Freedom of Information Act 2000 (the "Fol Act") received Royal Assent on the 30th of November 2000. It establishes a general right of access to information held by public authorities.
- 1.2 From 1 January 2005, all information generated and stored in manual and electronic form (including email) by public authorities maybe requested by members of the public and organisations (see section 2 "Who can make a request?') The Act is fully retrospective, i.e. requests can be made for any information created before the Act was passed.
- 1.3 For the purposes of the Fol Act, information is held by a public authority if-
 - a) it is held by the authority, rather than on behalf of another party, or
 - b) it is held by another party on behalf of the authority, including contractors.
- 1.4 The definition of a Local Authority is adopted by the Fol Act from the Local Government Act 1972. Its scope therefore includes Members of the Authority.
- 1.5 All Public authorities are required to maintain a Publication Scheme setting out what information it publishes or intends to publish as a matter of course, how this information will be published, and whether the information is available free of charge or on payment of a fee. The Publication Scheme is intended to promote an increasing culture of openness by encouraging the proactive publication of material held. The purpose of the Scheme is to make sure that a significant and growing amount of information is easily available without the need for individuals to make a specific request. Much of the material listed in the Authority's Scheme can be found on the Authority's website or in printed material freely available from the Authority.
- 1.6 This Guidance is based upon current advice from the Department of Constitutional Affairs and the Information Commissioner. Interpretation of the Act is still subject to much debate and discussion. This Guidance, and the way that the Authority handles information requests, will evolve in light of emerging practice and case law.

2 Information held by Members

- 2.1 Members may hold information in one of three ways-
 - a) through their political activities,
 - b) by the nature of their ward activities,
 - c) in the course of conducting Authority business through Members' engagement with officers and Members at meetings, advisory bodies etc.
- 2.2 Information held in connection with party political activities is outside the scope of the Act.
- 2.3 Information relating to a Member's actions on behalf of their ward constituents will generally fall under the 1998 Data Protection Act, but some may be considered as part of the Authority's information.

- 2.4 All information relating to the business of the Authority is within the scope of the Act including;
- a) Information supplied by officers to Members for the purposes of discharging their duties through Committees.
 - b) Information supplied to Members by way of officer briefings.
 - c) Information generated by Members, relating to Authority business, that has been formally submitted through Committee Chairs or to officers.
 - d) Information generated by officers by way of support to a Member (e.g. development of analysis).
 - e) Information relating to a Decision, once the Decision has been taken.
 - f) Personal comments made on reports or emails that are formally submitted via Committee Chairs or to officers.
- 2.5 Some information may be subject to exemptions within the Act. Briefing reports to meetings within the Authority may be able to rely upon exemptions relating to future planned publication of the information or its disclosure being likely to inhibit the free and frank provision of advice (see Attachment - exemptions s22 "Information intended for future publication" and s36 "Prejudice to effective conduct of public affairs" respectively).

3 Who can make a request?

- 3.1 From 1 January 2005, any person can request information held by the Authority. This could be an individual, a business, a Councillor, an association: journalists too will be able to request information using the Act.
- 3.2 A request for information need not mention the FoI Act, nor must the applicant give a reason for wanting to see the information. However the FoI Act only applies to written requests including email and faxes. The Authority has a duty to assist applicants make such a request if they require help in doing so.

4 What can people ask for?

- 4.1 Requests can be made for any recorded information held by the Authority. This includes information in all formats such as paper files, photographs, videos, maps and even emails. The Act relates to information irrespective of where that information may be stored. Authority information stored on privately- owned, or part Authority-funded PCs is included.
- 4.2 The applicant can express a preference as to the means by which they are given the information. There are three options:
- a) Provision in permanent form or another form acceptable to the applicant
 - b) Opportunity to inspect a record containing the information
 - c) Provision of a digest or summary of the information in permanent form or another form acceptable to the applicant
- 4.3 The Authority must provide the information in accordance with the applicant's preference only so far as is reasonably practicable. For example, if the information is available in electronic format and the requester does not have electronic facilities, the Authority should endeavour to provide the information in hardcopy where this is reasonably practicable.
- 4.4 The Acts permits the Authority to ask applicants to clarify and narrow down their request if they submit overly broad requests e.g. *"all in formation relating to a specific decision"*.

5 Confidential Information in Reports

- 5.1 Access to Information rules determine what information can be legally withheld in Committee reports.
- 5.2 The Office of the Deputy Prime Minister issued a consultation in September 2004 on Access to Information and following consultation it is proposed that regulations will be made to come into force early in 2005. The amendments proposed to Schedule I2A to the Local Government Act 1972 will create a new smaller and more focused set of exemptions where the Authority will be able to prevent information becoming public, that complement the requirements under the Data Protection Act 1998 and the Fol Act. It is proposed that the public interest test (see Attachment) should be added to certain exemptions.
- 5.3 The regulations will necessitate changes to the procedures in respect of the meaning of exempt information.

6 Handling Information - good practice

- 6.1 Members are encouraged to generate and handle information according to accepted best practice including;
- a) being objective and making statements that can be substantiated,
 - b) ensuring that information is only retained for as long as it provides value and destroyed thereafter,
 - c) knowing how to identify a Data Protection Subject Access Request and what to do with such,
 - d) knowing where to get advice when it is needed,
 - e) keeping information up to date.

7 Dealing with requests

- 7.1 Under the Act, requests must be dealt with promptly, and at least within 20 working days of the receipt of a clearly specified request. This time limit can only be extended if the Authority is waiting for a fee to be paid or if consideration is being given to whether an exemption applies (see Attachment). The applicant must be given a target date if an extension is required.
- 7.2 Unless an exemption applies, the Act requires the Authority to:
- a) confirm or deny we have the information, AND
 - b) disclose the information.
- 7.3 The majority of submitted information requests will be satisfied from records kept by the Authority..
- 7.4 Officers will not conduct searches on Members' PCs, emails or any Member maintained systems. Where information sought is considered to be solely held by Members, Officers will seek information from Members.
- 7.5 Members will need to decide what information meets the criteria of each request and edit the documents/email they hold accordingly prior to submission to the requesting Director. Alternatively they may rely upon officers to perform this task.
- 7.6 Any requests received by Members seeking information should be directed to the Director of Corporate Services or an appropriate officer in the same way as any

current enquiries are handled. Officers will assess such requests, checking if the information is readily available via the Authority's Publication Scheme and whether any exemptions apply.

- 7.7 Information may be released even if an exemption applies. If the public interest is better served by disclosing the information than by withholding it, then the exemption shall be disregarded (see Attachment).
- 7.8 Only information relating directly to the applicant's request needs to be provided, and not a whole document or entire email thread if the peripheral information does not relate to the enquiry. Documents and emails may be edited prior to release to remove information that does not meet the requirements of the request.
- 7.9 Members are reminded of their obligations under the Members' Code of Conduct. Failure to disclose the relevant information may be regarded as an offence under the Act.
- 7.10 The scope of the Act and the application of the exemptions dictate that complex information requests will be handled on a case-by-case basis with professional advice from the Director of Corporate Services.

8 Can requests be refused?

- 8.1 A request for information may only be refused if an exemption applies. The Attachment provides a list of the exemptions that are most relevant to the Authority along with outline explanations and examples of the exemptions. If it is decided to refuse a request, the applicant must be told in writing and the exemption explained.
- 8.2 The exemptions in the Act cover a range of situations, for example, where the information has been provided in confidence or if the information relates to investigations and proceedings conducted by a public authority.
- 8.3 Some exemptions are absolute, while others are subject to a public interest test. The public interest test may outweigh an exemption. This could be affected by timing. For example, it may be in the public interest to disclose information after a decision has been made that it would not be appropriate to make available during negotiation.
- 8.4 While the exemptions cover a variety of situations, there is no exemption for information, which could embarrass the Authority or which might show the Authority in a bad light. This is particularly pertinent where a request is for information contained in emails, as these tend to be a less formal means of communication.
- 8.5 The spirit of the Act is to make information available and therefore exemptions are likely only to apply to a minority of requests. Even if information is exempt under the Act, the Authority may nonetheless decide to release it to an applicant (see section 7 "Dealing with Requests").

9 Enforcement of the Act

- 9.1 Compliance with the Act is monitored and enforced by the Information Commissioner, a Crown appointee who reports to Parliament. If the Commissioner's Office is investigating a public authority, it can ask to see 'unrecorded information', e.g. if the Authority replies to a request for information that no record was kept of a particular

meeting, the Commissioner in investigating any complaint about this can ask us for information about what was said at the meeting.

- 9.2 It is a criminal offence for anyone in the Authority to tamper, conceal, block or destroy information where a person has made an information request and would be entitled to the information. Individuals can be found personally liable if they commit this offence and a fine of up to £5,000 may be levied.

10 Fees

- 10.1 The Government has issued Fees Regulations under the Act, under which up to a cost ceiling of £450 (estimated to equate to 2.5 days work) no charge will be allowed, except for 'disbursements' (i.e. copying and posting). The Authority is not obliged to spend more than £450 in responding to an enquiry.
- 10.2 The Authority is obliged to try to present the required information in the way requested, e.g. copies - or inspection - of original records, or a summary. If the cost ceiling of £450 would be breached by providing the information in the way requested, the Authority must seek an alternative, cheaper way to provide it, e.g. by inspection rather than by providing copies.
- 10.3 Where it is intended that a fee be charged, a fees notice must be sent to the applicant who has three months in which to pay. The 20 working day timeframe is suspended until the fee is received.

11 Complaints

- 11.1 The Authority's internal complaints process should be used for handling complaints relating to Fol. The Director of Corporate Services will review any Fol related complaints.
- 11.2 Individuals will have the right to complain to the Information Commissioner where they believe that their rights under the Fol Act have not been maintained. The Commissioner can issue an enforcement notice requiring that the Authority release the requested information. Rights of appeal to the Information Tribunal will exist for both the applicant and the Authority.

12 Additional information sources

Information Commissioner's website,
www.informationcommissioner.gov.uk
Department of Constitutional Affairs website
<http://www.dca.gov.uk/index.htm>
or by contacting the Director of Corporate Services email dcs@westyorkshire.gov.uk

ATTACHMENT - EXEMPTIONS RELEVANT TO THE AUTHORITY

There are twenty-three exemptions in the Fol Act. Not all of these will apply to the type of information held by the Authority: the most relevant ones have been included below.

Absolute Exemptions

If one of these exemptions applies, the information request shall be refused citing the exemption and the reasons it applies.

s21 - Information accessible to applicants by other means

including:

- leaflets, brochures and publications available from the Authority's public contact points
- information available on the Authority's website;
- information in the Authority's Publication Scheme;
- information available to the public under other legislation

s32 - Court records

This exemption permits the Authority to withhold information which is held "only by virtue" of being contained in documents which have been:

- a) served upon or by a public authority, for the purposes of court proceedings,
- b) filed with a court or tribunal, or
- c) placed in the custody of a person conducting an inquiry or arbitration

The phrase "only by virtue of" implies that if the Authority also holds the information elsewhere, it may not rely upon the exemption. Records held solely for the purposes of litigation that are contained in court records are exempt. However, if those records are also held for another business purpose, then they would not be exempt.

s40 - Personal information (about the applicant)

If the applicant is requesting personal data about him or herself, then there is no right of access under the Freedom of Information Act. Such requests automatically become "subject access requests" under the Data Protection Act.

s41 - Information provided in confidence

A duty of confidence arises when one person (the "confidant") is provided with information by another (the "confider") in the expectation that the information will only be used or disclosed in accordance with the wishes of the confider. If there is a breach of confidence, the confider or any party affected may have the right to take action through the courts. The law of confidence is a common law concept which incorporates an inherent public interest test. In summary, there are three requirements for establishing breach of confidence:

- a) that the information has the necessary quality of confidence about it; and
- b) that the information was imparted to the other party in circumstances importing an obligation of confidence; and
- c) that disclosure of the information would be to the detriment of the party seeking to restrain disclosure.

s44 - Prohibitions on disclosure

Information should not be released if its disclosure is already prohibited by another law or by a European Community obligation. This exemption also applies if to release the information would constitute contempt of court.

Public Interest Test Exemptions

If one of these exemptions applies, the requested information shall be released unless the Authority decides that the public interest in maintaining the exemption outweighs the public interest in disclosure.

s22 - Information intended for future publication

including:

- information relating to research projects which it would be inappropriate to publish until the project had been completed;
- statistical information which is usually published to a specific timetable (annually, quarterly etc); or
- minutes of meetings which will not be approved until the next meeting.

s30 - Investigations and proceedings conducted by public authorities

including:

- information obtained from confidential sources for criminal or civil proceedings.
- information relevant to criminal investigations and proceedings (where the Authority has the power to carry out these activities) relating to particular investigations or proceedings.
- information can be withheld even once the investigation or proceedings have concluded as the exemption is not subject to any time limit. (However, the fact that they have concluded will be something to be taken into account in applying the public interest test).
- Statistics about the successful litigation rates in a particular area are outside the scope of this exemption.

s31 - Law enforcement

including

- building security procedures, as their release would prejudice the prevention of crime.
- the assessment or collection of any tax or duty
- information relating to a regulatory and enforcement activity
- any civil proceedings arising out of investigations
- information used to ascertain whether someone has failed to comply with the law, or there has been improper conduct, or
- investigations relating to professional or management competence,
- accident investigations,
- health and safety at work investigations.

s36 - Prejudice to effective conduct of Public affairs

Information can be withheld if, in the reasonable opinion of a 'qualified person', the disclosure would, or would be likely to, inhibit-

- (i) the free and frank provision of advice, or
- (ii) the free and frank exchange of views for the purposes of deliberation, or
- (iii) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.

The Director of Corporate Services, in his capacity as the Authority's Monitoring Officer, will act as the Authority's 'qualified officer'.

s38 - Health and safety

including

- information as to the layout of a property that might be vulnerable to terrorist or criminal attack as its disclosure might endanger the safety of those working at these sites.

s39 - Environmental information

The Authority is already under a duty to provide a right of access to certain information about the environment under the Environmental Information Regulations 1992 (as amended by the Environmental Information (Amendment) Regulations 1998).

- a) if information falls under the environmental information access regime and
- b) the information is exempt from disclosure under those regulations,
- c) the Authority will consider the public interest in disclosing under the FoI Act to show that there is a greater public interest in the withholding of the information than the public interest in releasing the information to the applicant. The starting point is in favour of disclosure.

s40(2) Personal information (about other People)

If the requested information is about someone other than the applicant ie., "third party data", there is an exemption if disclosure would breach any of the Data Protection Principles. There are also some special rules to be applied in cases where the personal information is about someone who has formally objected to its disclosure. Such requests will need to consider the requirements of the Data Protection Act alongside those of the FoI Act.

s42 - Legal Professional privilege

This exemption applies where a claim to legal professional privilege could be maintained in legal proceedings. Legal professional privilege is a common law concept and is based upon the need to protect a client's confidence in communications with his/her professional legal adviser to ensure that there is the greatest chance that justice is administered to the client. Legal professional privilege arises on communications between the Authority and its legal adviser (internal or external). It also arises on communications made in anticipation of legal proceedings or during legal proceedings - for example, communications between the Authority's legal adviser and witnesses or experts.

s43 - Commercial interests

This exemption applies to trade secrets and to information which, if disclosed, would (or would be likely to) prejudice the commercial interests of any person (including the Authority who holds the information).

Trade secrets include formula or method of doing business, designs or special methods of construction, computer programs or business information such as a list of customers.

Exemptions for information provided during contract procedures are subject to the public interest test.