

The Freedom of Information Act 2000 (FOI Act) received Royal Assent on 30 September 2000 but its implementation was phased in, with the duty on public authorities to adopt publication schemes being introduced first, followed by the individual right to access provisions which came into force on 1 January 2005. This note is intended to summarise the main provisions of the Act and to indicate where further guidance may be found.

6.1) The Basics of the Freedom of Information Act:

- Section 1 of the Act gives a general right of access to information. The right of access includes both the right to be told whether the information exists, as well as the right to receive it.
- However, the Act does not require authorities to hold onto information for longer than is necessary, or is otherwise required by law, simply because it might be the subject of a request sometime in the future.
- A request for information (unless for environmental information – see below) needs to be in writing, although an e-mail request is sufficient. The request must give enough details about the information to enable the authority to identify it and basic contact details must be provided so that a reply can be sent.
- The right of access to information is subject to a range of exemptions and these are listed in Appendix 1. Some of the exemptions are “absolute”. Once an authority decides that an absolute exemption applies to information requested it does not have to release it under the FOI Act, although discretionary release is still possible. In the case of all other exemptions, once it is decided that one or more of them applies, the authority must still release the information unless it judges that the public interest in withholding the information is greater than the interest in disclosure (the “public interest test”).
- Two statutory Codes of Practice (www.informationcommissioner.gov.uk), one covering aspects of compliance, and the other covering the management of records, have been produced and authorities have to comply with these Codes.
- Generally requests must be dealt with within 20 working days from the receipt of the request, but if it is necessary to apply a public interest test, this time limit does not apply and the authority should respond within a reasonable period.
- If a request is refused, the refusal notice should give the reasons for refusing the request and advise the applicant as to their rights of appeal – both internally by way of a complaint and, following that, by way of an appeal to the Information Commissioner.

6.2) Publication Schemes

Every public authority must prepare and publish a “publication scheme” which sets out the classes of information which the authority publishes or intends to publish, how that information may be obtained, and any charge that is made for it. Both the model scheme and the parish council model guide to information can be downloaded from the Information Commissioner’s website, along with associated guidance on completing these documents.

6.3) Processing requests for Information

The following process should be followed:-

1. Acknowledgement of the request within 10 days of receipt.
2. Request for fee and details of an estimate if the fee is higher than the £25 basic fee, should be submitted to the requestor within 14 days.
3. Upon receipt of fee, or if no fee required, the response should be submitted to the requestor within 28 days. Any delay should be intimated to the requestor, with a revised response date.

6.4) Freedom of Information Fees Regulations

In respect of requests made under the FOI Act, the only charges which can generally be made are to cover the cost of photocopying, printing, postage, etc., i.e. disbursements rather than the labour costs associated with collating the information.

Hurworth Parish Council has decided to follow this principle for initial original requests for information.

However, follow up requests and requests for similar information from the same party or group may attract a service fee. A fee of £25 may be requested, and payment of this fee will be required prior to the response being prepared.

Furthermore, where requests for information require lengthy responses and incur work by staff, then larger fees may be levied, based upon the following criteria.

6.5) Fee Calculation

Under the Fees Regulations costs are split into two categories, prescribed costs and disbursements. Prescribed costs are mainly concerned with the amount of staff time that is devoted to processing a request whilst the disbursements cover the costs incurred through material costs and some out of pocket expenses. All fees will have to be estimated with the estimate forwarded to the applicant for acceptance, the Regulations state that the final fee can be no higher than the estimate so accurate estimates are of vital importance.

6.6) Prescribed Costs

Prescribed costs can be viewed as the labour costs that would be incurred by the Authority when processing a request. The Regulations have set a ceiling on these costs of £450 above which the Authority is not obliged to provide the information. For the purposes of estimating the prescribed costs the Regulations provide a figure of £25 per hour, this equates to 18 hours of staff time.

Prescribed costs are those costs which the Authority reasonably expects to incur in:

- determining if the information is held;
- locating the information;
- retrieving the information and;
- extracting the information from a document containing it.

The Authority **cannot charge** for time taken by staff to inform the requestor that the information is or is not held or for them to communicate it to them.

6.7) Disbursements

Disbursements are the costs incurred for materials used or other expenses reasonably incurred when processing a request. All disbursements can be recovered in full.

These costs can include, but are not limited to:

- reproduction costs – paper and toner, not the staff time for copying etc;
- complying with a request for the information to be provided in a specific format and;
- postage or other delivery costs.

6.8) Calculating the Fee

The prescribed costs are estimated to be below the £450 appropriate limit;

Where prescribed costs are estimated to be below £450 the fee chargeable to the requestor can consist only of the disbursements. The actual fee charged can be less than the estimate but not greater.

The prescribed costs are estimated to be above the £450 appropriate limit;

There is no requirement in the Freedom of Information Act to provide information where the prescribed costs are above the appropriate limit of £450. If the Authority decides to provide the information it can charge for both the disbursements and prescribed costs. The final fee charged to the requestor cannot be higher than the estimate.

APPENDIX 1 ; List of FOI Act Exemptions

Absolute exemptions:

- information accessible to applicant by other means (s21);
- information supplied by, or relating to, bodies dealing with security matters (s23);
- court records (s32);
- Parliamentary privilege (s34);
- information provided in confidence (s41); and
- prohibitions on disclosure (s44).

Partly absolute:

- prejudice to effective conduct of public affairs (s36); and
- personal information (s40).

Qualified:

- information intended for future publication (s22);
- national security (s24);
- investigations and proceedings conducted by public authorities (s30);
- formulation of Government policy etc. (s35);
- communications with Her Majesty, etc and honours (s37);
- health and safety (s38);
- environmental information (s39);
- legal professional privilege (s42);
- defence (s26);
- international relations (s27);
- relations within the United Kingdom (s28);
- the economy (s29);
- law enforcement (s31);
- audit functions (s33); and
- commercial interests (s43).