

Freedom of Information Foundation Pack

An overview of the policy principles to be considered when DWP staff are considering a request for information under the Freedom of Information Act

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30 November 2004 (Revised May 2005)

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Foreword to revised edition - May 2005

The Freedom of Information Act came fully into force on 1st January 2005.

Since that date any person can ask the Department for any information it holds and can expect to receive a copy of that information except in specified circumstances.

As a customer facing department, DWP already provides huge amounts of information to our customers about benefits, child support and back to work services on a daily basis. This “normal business” continues as normal under FoI. **It is important to remember that the normal rules on individual customer confidentiality remain unchanged.**

Experience of the new FoI regime to date suggests that requests are generated by contentious issues and events, not by the simple introduction of access rights. Requests to date have been received from a mixture of journalists, MPs, and members of the public. A network of Freedom of Information Focal Points and Information Officers is in place across the department who will provide advice on handling complex FoI requests. Their details can be found in Part IV of this Pack.

Following the guidance in this Pack will enable you to help DWP deliver the government’s intentions of creating a more open public service.

Further information about this Pack can be obtained from Adjudication and Constitutional Issues Information Policy Division (Data Protection and Freedom of Information Section) who have departmental responsibility for Freedom of Information, Data Protection, disclosure and confidentiality covering both personal customer information and non-personal information. Please contact Charles Cushing on 020 7962 8581 or Charles.Cushing@dwp.gsi.gov.uk

Paul Jenkins
Head of Law and Special Policy Group
Senior FoI Champion
23 May 2005

Foreword (30 November 2004)

The Freedom of Information Act will be fully implemented on 1st January 2005.

From that date any person will be able to ask the Department for any information it holds and can expect to receive a copy of that information except in specified circumstances.

This should not come as a major surprise to DWP. As a customer facing department, DWP already provides huge amounts of information to our customers about benefits, child support and back to work services on a daily basis. This “normal business” will continue as normal under FoI. It is important to remember that the normal rules on individual customer confidentiality remain unchanged.

It is not possible to accurately guess how many extra requests for information we may receive as a result of Freedom of Information. However experience with the Open Government Code and overseas experience suggests that requests are generated by contentious issues and events, not by the simple introduction of access rights.

There may be an increase in requests following various external advertising campaigns but I do not anticipate this to be either significant or sustained. It is however probable that there will be an increase in requests for information about policy matters. These are likely to be dealt with in Central Directorates or via Ministers.

Following the guidance in this Pack will enable you to help DWP deliver the government’s intentions of creating a more open public service.

Further information about this Pack can be obtained from Adjudication and Constitutional Issues Information Policy Division (Data Protection and Freedom of Information Section) who have departmental responsibility for Freedom of Information, Data Protection, disclosure and confidentiality covering both personal customer information and non-personal information. Please contact Charles Cushing on 020 7962 8581 or Charles.Cushing@dwp.gsi.gov.uk

Paul Jenkins
Head of Law and Special Policy Group
Senior FoI Champion
30 November 2004

Introduction

Welcome to DWP's Freedom of Information Foundation Pack containing everything you wanted to know about Freedom of Information but were afraid to ask. However if this does not answer all your questions please contact your Focal Point shown in Part IV of this document or Charles.Cushing@dpw.gsi.gov.uk

This Pack provides an introduction to Freedom of Information (Fol) as well as detailed information on the principles underpinning decisions to disclose, or withhold, information.

A separate self instruction interactive training module is available at http://intranet/1/corp/sites/lspg/aciinf/dpfoi/training/DWP_D028423.asp

The Pack, whilst acting as a stand-alone resource for Fol issues to be used by all staff including trainers as appropriate. It can also be dipped into in order to pick out the parts that are relevant to specific audiences.

Part I is a general overview of Fol including; what is it, who does it apply to, and what are its main features?

Part II includes information on the access rights contained in the Act, handling requirements, and various training aids such as Frequently Asked Questions, a quick quiz and a questionnaire. These can all be isolated and used independently of the other parts of the Pack.

Parts I and II are suitable for staff at all levels who need a basic awareness of the Freedom of Information Act.

Part III contains more detailed guidance on the exemptions within the Act. These exemptions allow information to be withheld in certain circumstances. Part III also contains details about the Public Interest Test, allowable Fees, monitoring requirements and the relationship between Freedom of Information and the Data Protection Act.

Part IV contains contact details of the Fol Focal Points.

Parts III and IV are more suited to the Focal Points and others more interested in the application of the exemptions and the use of the Public Interest Test.

The Pack will not tell you what should or should not be released in individual cases. Each request for information must be considered on its own merits, taking into account all circumstances and the sensitivity of the information at the time of the request. Any doubts about disclosure must be referred to your Fol Focal Point (see list at Part IV) and/or ACI INF (Charles.Cushing@dpw.gsi.gov.uk or <mailto:Martin.Dillon@dpw.gsi.gov.uk>) who will provide detailed assistance.

As the Pack is intended for a number of audiences there will obviously be some repetition but these messages bear repeating and help to meet our obligations to ensure that staff are as fully informed about FoI as they need to be.

If you have any comments on this pack please contact Charles Cushing on 020 7962 8581 or Charles.cushing@dpw.gsi.gov.uk

Freedom of Information: Foundation Pack Part I

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Freedom of Information (Fol) – What is it?

The Freedom of Information Act 2000 (the Act) received Royal Assent on 30 November 2000.

The Act gives any person of any nationality anywhere in the world the right to request official information from DWP and other public authorities. This right is subject to certain exemptions, which are explained later in this pack.

The access rights commenced on 1 January 2005. All requests will be considered on their own merits and each request will need to be assessed against Freedom of Information criteria.

Who does Fol apply to?

Fol applies to all public bodies including but not exclusively:

- government departments
- the police
- local authorities,
- schools and
- hospitals/surgeries etc.

In the case of DWP, Fol will apply to the whole department including its Non-Departmental Public Bodies.

Fol has a much wider scope than the Code of Practice on Access to Government Information (Open Government Code) which had been in place since 1994 and

only applied to bodies that fell under the remit of the Parliamentary Commissioner for Administration (the Ombudsman). It is currently estimated that over 140,000 bodies will fall under the FoI Act.

Scotland

Scotland has introduced its own Freedom of Information legislation to cover all bodies within the remit of the Scottish Parliament.

The UK FoI Act applies to public authorities in England, Wales and Northern Ireland and to bodies not covered by the Scottish legislation such as DWP.

Therefore, DWP offices in Scotland fall under the UK legislation as does the rest of the department and are not covered by the Scottish legislation.

What are the main features of FoI?

Access rights

Any body (whether an individual person or corporate body, such as a private company) can apply to have access to any recorded information held by the Department. This means that potentially all information held by DWP can be released, **subject to certain exemptions**, no matter in what form it is held, for example:

- registered (or unregistered) paper files
- electronic documents
- notebooks
- miscellaneous collections of paper etc.

The reason for the request, if provided, should not be taken into account in deciding whether particular information is to be released or withheld. If a reason is not provided **you should not ask why the information is wanted**.

Additionally, the Act also provides applicants with the right to be told whether the information they seek exists or not, but again this is subject to certain exceptions.

Form of response

The applicant can, within reason, specify the manner in which they wish to receive the information. This can be by:

- providing a copy
- providing a summary or
- inspection of the record.

We must attempt to comply with the applicant's preferred means of providing the requested information. In case of any doubt, seek advice from your Focal Point.

The Act is fully retrospective

This means that applicants can ask for any information held by the Department **irrespective of its age**. For example, a document created in (say) 1999 can be requested and provided under the access to information provisions of the Act even though those provisions did not come into force until 1st January 2005.

Personal information

It is important to remember that Freedom of Information does not extend to the provision of personal information about the applicant themselves. Such requests will continue to be handled under the provisions of the Data Protection Act 1998.

Further guidance on requests for personal information, whether about the applicant or someone else, can be found in Part II of this Pack.

Requests for information

Requests for information must:

- ***be in writing***
- ***in permanent form (including e-mail and faxes)***
- ***state the name of the applicant***
- ***state an address for correspondence (an e-mail address would be acceptable)***
- ***describe the information requested.***

Requests for information could made to any part of the Department.

The request may be for any kind of information including for example, voice and video recordings or CCTV footage.

Remember: we *only* have 20 working days from date of receipt in which to respond.

What do we mean by 'Working Days'?

'Working Days' are all days except Saturdays and Sundays, Christmas Day and Good Friday, and Bank Holidays anywhere in the UK as set out in the Banking and Financial Services Act 1971. [\[Link to FAQ timetable for providing responses\]](#)

Civil Service 'privilege days' count as working days. If your office is closed for a privilege day this day should still be built into the timetable for response

Exemptions to the duty to disclose

There are a number of exemptions to the general right of access to information.

A full list of the exemptions and more detail on what they mean can be found at Part III of this Pack.

Most exemptions have to be considered in two stages:

- firstly, whether the exemption applies to all or part of the information requested and, if so,
- does the public interest in applying the exemption outweigh the public interest in disclosing the information?

Such exemptions are known as **qualified** exemptions.

There are also a number of **absolute** exemptions to which the **public interest test does not apply**.

However, even if an exemption does apply it does not necessarily prevent us disclosing the information. It should also be remembered that even if the information is covered by an exemption we may still need to confirm whether or not the information is held. Your Focal Point/ACI INF can give further guidance on this in relation to individual requests.

Publication Scheme

In addition to providing information when asked to do so, FoI also requires public authorities to be proactive in the release of official information. This will, in effect, pre-empt individual requests for information.

As a result, each body covered by the Act must produce a Publication Scheme. The scheme lets people know the types of information that DWP makes available; the manner in which it is available and whether there is any charge for the information.

The [DWP Scheme](#) was approved by the Information Commissioner in November 2002 and can be found on the Intranet.

The Scheme is also signposted on the home page of the DWP Internet site for access by members of the public at http://www.dwp.gov.uk/pub_scheme/

Responsibility for maintaining the Scheme lies with Corporate Communications, Information Management and Research, who can be contacted at:

DWP Publication Scheme Team
Information Management and Research
Room 1S25, Quarry House
Leeds LS2 7UA

Telephone: 0113 232 7539
Fax: 0113 232 7813

Email: Publication-Scheme@dwp.gsi.gov.uk

Records Management

Any Freedom of Information legislation is only as good as the quality of the records to which it provides access. Rights of access are of little use if:

- reliable records are not created in the first place
- they cannot be found when needed or
- the arrangements for their eventual archiving or destruction are inadequate.

Existing Departmental good practice guidance stresses the importance that the Department places on sound records management practices. It is also important to recognise that good record keeping is vital for the smooth day to day running of our business.

In formulating its Records Management Policies the department has been advised by the Lord Chancellor's Code of Practice on the Management of Records [the Code], issued under section 46 of the Freedom of Information Act. The Code provides guidance to all public authorities on the practices it would be desirable for them to follow. Failure to comply with the Code, may also mean that an authority could be failing to comply with the Public Records Acts 1958 and 1967 or other record-keeping or archives legislation, and may consequently be in breach of statutory obligations.

For advice and guidance on Records Management contact the Departmental Records Office on 01253 330215 or see their [Intranet site](#)

Open Government

The Freedom of Information Act superseded the Code of Practice on Access to Government Information, usually known as the Open Government Code, on 1 January 2005.

Enforcement

The Freedom of Information Act is enforced by the Information Commissioner who administers and oversees compliance with both Freedom of Information and Data Protection legislation.

Failure to comply with the provisions of either the Freedom of Information or Data Protection Acts may result in the Commissioner taking enforcement action. This could include failure to meet the set deadlines for replies; **20 working days for FoI and 40 calendar days for Data Protection**. That said, this is only likely if such failure is deemed to be a systemic failure rather than a one-off incident.

Failure to comply with an enforcement notice is a criminal offence.

The serving of an enforcement notice by the Commissioner would be potentially embarrassing for any Department, and also raises the potential for compensation payments to be awarded to individuals

Freedom of Information: Foundation Pack Part II

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Access Rights under Freedom of Information

The right to information is contained at Part 1, Section 1 of the Act as follows:

“Any person making a request for information to a public authority is entitled -

- a) to be informed in writing by the public authority whether it holds the information of the description specified in the request, and*
- b) if that is the case, to have that information communicated to him”*

So, what is a Fol request?

Every **written** request for information, whether received by post, e-mail, fax or by hand, is technically a Freedom of Information request even if the Act itself is not mentioned.

The request may be for any information that the department holds and may be received in any part of the department. **It is important therefore that all staff are able to recognise such a request and that post opening teams identify**

Fol requests quickly and then direct them to the relevant information owner as soon as possible.

If the request is for personal information about the applicant it falls out of Fol provisions and is instead handled under Data Protection Act (DPA) guidelines. Information about the interface between the Data Protection and Freedom of Information Acts can be found in Part III of this Pack.

Do I need to retain everything?

The fact that Fol covers all information held by DWP does not mean that you have to keep everything just in case a request may be made for it. You should continue to retain only that material for which there is an identified business need for that retention. Normal retention policies apply, as do weeding exercises.

However you must not destroy material once it has been requested under Fol or DPA because, for example, you think that its release could be embarrassing.

Why can't I destroy information when I have a request?

From 1 January 2005 it is a criminal offence to alter records with intent to prevent disclosure.

In this context, altering a record includes:

- defacing
- blocking
- erasing
- destroying or
- concealing.

The offence can be committed by a public authority and any person employed by, is an officer of, or subject to the direction of, the public authority. It cannot be committed by a government department but **can be committed by an individual civil servant.**

The offence can only be committed once a request has been received.

Altering or destroying records is a summary offence punishable by a fine not exceeding £5,000.

Proceedings under this part of the Act can only be instituted by the Information Commissioner in England and Wales, or by or with the consent of the Crown Prosecution Service, or the Procurator Fiscal in Scotland.

Does the request need to be in writing?

Yes, requests for information must:

- be in writing

- in permanent form (including e-mail and faxes)
- state the name of the applicant
- state an address for correspondence (an e-mail address would be acceptable) and
- describe the information requested.

Requests for information received over the telephone are not Fol requests, even if the Act is quoted.

If the request is not made in a permanent written format neither you nor the applicant can refer back to the request to ensure that it has been properly met. This is particularly important if the applicant is not satisfied with the way a request has been handled. Therefore if someone asks for information and wants Fol obligations to kick in they should put their request in writing.

However this does not mean that you should no longer respond to telephone requests for information which are part of your everyday routine business, you should continue to handle these enquiries as you always have done.

Refusals

The applicant is entitled to be told why information is not being provided if we decide to withhold some or all of it.

You will have to advise the applicant of which exemption you are relying upon to justify a refusal to disclose and why you believe the exemption applies. In most cases you will also need to explain why the Public Interest test favours the use of the exemption i.e. withholding the information rather than disclosure. Further information on exemptions can be found at [Part III](#) of this document. Part III also explains the application of the Public Interest test.

In most cases we are also obliged to confirm or deny the existence of material that has been requested even if it is exempt.

IF YOU ARE CONSIDERING NOT RELEASING ANY OF THE INFORMATION REQUESTED YOU SHOULD CONTACT YOUR FOCAL POINT AND/OR ACI INF TO DISCUSS THE CORRECT APPLICATION OF AN EXEMPTION BEFORE COMING TO A FINAL DECISION. A list of the Focal Points can be found at Part IV of this Pack.

How many requests do we anticipate receiving?

Whilst Freedom of Information is not just about putting the Open Government Code onto a statutory basis, the basic principles remain very similar. DWP had already successfully operated the Code with well established procedures for handling requests and monitoring of Code activity. This is unlikely to change under Freedom of Information.

Introduction of the access rights in January 2005 was accompanied by a national advertising campaign by the Information Commissioner to raise awareness amongst the public. There was also extensive media coverage. As a result in January 2005 the department received around 175 monitorable requests from journalists, MPs and the general public. These requests were mainly about developing policy areas such as pension reform; incapacity benefit reform; the Child Support Agency and DWP contracts.

It is clear that publicity about the introduction of Freedom of Information also led individual members of the public to use FoI to request information previously refused to them under Data Protection rules. These requests continue to be handled under Data Protection in light of the exemption under FoI for personal information.

The Department for Constitutional Affairs (DCA) require all central departments, including DWP, to provide monitoring information about certain FoI requests. The network of FoI Focal Points spread across the department provide their information to the central FoI team for collation across the department and to feed into a government-wide report produced by the DCA. The number of requests for the first quarter of 2005 will be available in late May/early June.

Your FoI Focal Point will advise you of which requests must be accounted for under government monitoring rules and will also answer any other questions you may have on Freedom of Information.

Further information about the monitoring requirements can be found at [Part III](#) of this document or you can speak to your FoI Focal Point or Charles Cushing.

Handling requests for information

How will I recognise a request?

Every written request for information, whether received by post, e-mail, fax or by hand delivery, is a Freedom of Information request even if the Act itself is not mentioned.

Who should handle the request?

Most requests for information will continue to be handled as part of everyday business.

If you have any doubt as to what is being requested or you believe that some, or all, of the information may be exempt from disclosure you should seek advice from your line manager or other senior officer.

If a request leads to consideration of either applying an exemption or charging a fee, you should **contact your Focal Point (FP) before taking any further**

action. The FP will advise you on how to progress the request and will give advice on how to apply an exemption, after discussions with Adjudication and Constitutional Affairs Information Division Data Protection and Freedom of Information Section (ACI INF), as appropriate. The FP will also monitor the outcome of these requests, reporting to ACI INF as required.

What if I don't understand what the applicant is asking for?

If a request is not specific enough about what is being asked for to enable you to action the request you should go back to the applicant to ask them to be more specific. Please refer to the Standard Letters on the FoI Intranet site http://intranet/1/corp/sites/lspg/aciinf/dpfoi/foi/draft_letters/index.asp#TopOfPage

In such situations the clock for the 20 working day timescale for a reply stops ticking. The clock re-starts afresh from zero once you have received the required clarification or information, in effect making it a new request.

The 20 day clock does not stop if you are only going back to the applicant to query a part of the request.

Requesting clarification/rewording of the request must never be used as a delaying tactic in its own right.

Remember, there is an obligation under the Act to provide advice and assistance to the applicant or would-be applicant.

How do I reply to the request?

The act permits the applicant to express a preference to have the requested information communicated to him in one of three specified ways.

The applicant may therefore ask for the information in any one, or more, of the following ways:

- a copy of the information in permanent form or in another form acceptable to the applicant
- a reasonable opportunity to inspect (view) the information or
- a digest or summary of the information in permanent form or in another form acceptable to the applicant

If the applicant specifies how he wants the information provided we must, as far as is reasonably practicable, comply with that request. In coming to the decision of whether we can meet the applicant's preference, we should have due regard to all the circumstances, including potential costs, involved in meeting the preference.

Advice on such cases can be obtained from your Focal Point. If, after consulting the Focal Point it is decided not to comply with the preference the applicant must

be told why this decision has been made and provide the information in a manner that we can meet.

WHAT IF THE APPLICANT IS UNHAPPY WITH A DISCLOSURE DECISION?

Always advise your Fol Focal Point as soon as a request for a review is received. The [Focal Point](#) (follow this hyperlink to the current list of departmental Focal Points) will then liaise with the central Fol Team in ACI INF

Can the applicant appeal against a decision not to provide information?

Yes, the Fol Act provides applicants with the right to apply to the Information Commissioner and for the Commissioner to decide on whether a request has been dealt with in accordance with the requirements of the Act. The applicant must be advised of these review/complaint rights.

Grounds for a complaint to the Commissioner include:

- failure to provide the information requested
- failure to respond within 20 working days or
- failure to explain why longer than 20 working days is needed (the Public Interest extension)
- failure to give proper advice and help in formulating the request
- failure to give information in the form in which it is requested
- failure to properly explain reasons for refusing the request
- failure to correctly apply an exemption under the Act

However, if the applicant is dissatisfied with a decision, or the handling of a request, he should first complain directly to us (DWP). The Commissioner may deem a complaint ineligible for his consideration if the public authority (DWP) has not been asked to internally review their decision not to disclose information or to look at the handling of the request.

Because of the above, all refusal notices must include standard paragraphs advising the applicant of these review rights. These review paragraphs are as follows:

“If you are not satisfied with my handling of your request/reason(s) for not giving you the information please tell me why within two calendar months of the date of this letter. I will then arrange for someone to conduct an internal review of your request and my handling/decision. The review will be conducted by another officer, usually of a more senior grade to myself. This person will have taken no part in my original decision. You will be advised you of their decision in writing.”

If you are not content with the outcome of the internal review you have the right to apply directly to the Information Commissioner to look into the way your request has been handled. Please note that generally the Commissioner cannot make a decision unless you have first exhausted DWP's own complaints procedure. The Commissioner can be contacted at:

FoI Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
Fax: 01625 524 510
email: mail@ico.gsi.gov.uk"

The review paragraphs can also be found in the Standard Letters which are on the departmental FoI Intranet site at [FoI Standard Letters](#)

Does the review request/complaint need to be in writing?

Yes, to formally engage the review process the request or complaint must be made in writing (emails are acceptable). Should a complaint be received orally, the complainant must be informed to put it in writing.

Is there a time limit for handling a review?

Yes, the target time for handling an internal review is 20 working days. If there is any suggestion that this target may not be met, which should only arise where the issues surrounding the complaint are complex or the Public Interest test is being applied, the reviewing officer should let the Focal Point/ACI INF know and inform the complainant of the anticipated delay, explaining the reason(s) for it and giving a date by which it is expected that a full response will be sent. In any case this should be no later than 40 working days from receipt.

How, and by whom, is a review conducted?

If the applicant is unhappy with a decision on disclosure, or with the handling of the request, he may request an internal review of the decision and/or handling. This does not necessarily mean that he must write in with a definitive form of words such as "I would like you to conduct an internal review of your decision of....." The applicant may write saying something like "Thanks, but you haven't fulfilled your obligations" or "I'm not happy with this".

Discretion needs to be applied in deciding the applicant's wishes but generally in such cases you should not go back to the applicant requiring him to expressly state that he wants a review. The Focal Point or reviewing officer should write to

the applicant confirming that his letter is being treated as a review and indicate when it will be completed.

The review should be conducted by someone other than the officer who made the original decision. The reviewing officer should:

usually be of a more senior grade to the original decision-maker. If this is not possible discuss with your Focal Point or the ACI INF FoI Team as soon as possible

there will be circumstances where it is not possible, or appropriate, to find a “more senior” officer. For example, the original decision may have been made by a member of the SCS and/or there is no one more senior in the business area. In such cases, one should identify who is best placed to conduct the review in discussion with the Focal Point and ACI INF

another case where a “more senior” officer is not appropriate is where information is being withheld under the exemption at section 36 of the FoI Act (prejudice to the conduct of public affairs). In such cases, a Minister has made the decision to withhold. In this situation the review should be conducted by someone of at least Grade 7 level. The reviewing officer will look at how the request was handled and whether there is any further information that should have been put before Minister

have played no part in the original decision

preferably come from the same work area **and**

have a good knowledge of the subject matter.

It is strongly recommended that the reviewing officer should always be of Grade 7 level. If there is any difficulty with this please consult your Focal Point and/or the ACI INF FoI Team as soon as possible.

The reviewing officer should look at the request afresh and, weighing up all circumstances, come to an independent decision. This may mean that the original decision is upheld or overturned.

As a minimum, the reviewing officer should have:

a copy of the original request
any other pertinent correspondence with the applicant
an explanation/copy of:

- what information was released in response to the original request
- what was withheld and
- why it was withheld

a copy of the complaint and

the original decision makers views on the merits of the complaint

It is important that the reviewing officer clearly records the thinking behind his decision; this will assist in the event of any investigation by the Information Commissioner. The reviewing officer should advise the applicant of the 'new' decision and the reasons for it and despatch any information that may now be appropriate after discussing it with the original decision maker.

Review Principles

The following points apply to **all** internal reviews:

it is important to be aware that the internal review stage is an opportunity to **consider a case completely afresh**. An internal review should not be treated as an appeal, but as a chance to ensure that we made the right decision on the original request, in the light of all the relevant records

the review stage may also be a trigger for the involvement of (other) senior officials, Ministers, or the DCA Clearing House, for the first time – ACI INF will be involved at this stage

internal reviews do not need to be overly bureaucratic, but must be a **fair and impartial means** of reviewing decisions made during the original consideration of whether to release information

as a minimum, all internal reviews must consider the information released against the information requested and make a **full review of the papers** associated with the original application

the reviewing officer should also discuss the decisions made with the original decision maker(s) who dealt with the original application in order to build a full picture as to how and why the earlier decision was made. It is possible that a case meeting may be the best way to hold these discussions, enabling the reviewer to ask questions or request further papers, as necessary

the reviewing officer should not feel bound by any views on the complaint expressed by those who dealt with the original request. These views should be treated as background information, rather than a suggestion of how to handle the complaint

Outcome of the review

information which was withheld should now be released: the reviewing officer should inform the complainant in writing of the new decision and enclose the information. If the information cannot be enclosed at that time, the reviewing officer should inform the complainant when the information will be released to him. The information must be released as soon as practicable following the decision. It can be as important to manage the release of information as it is in deciding whether to release. Whilst FoI is purpose and applicant blind we still need to think about what is being released and consider:

does it answer the request
does it go beyond the scope of the request and, if so
does this need explaining
does the information provided need to be put into context and
Does Press/Private office etc need to know before release.

Always involve ACI INF FoI Team in these circumstances and also consider whether the request relates to sensitive information. In particular, be aware of requests where journalistic licence may be applied - Press Office will need to see such requests. If you are handling such a review and are not sure whether Press Office should be told, please contact the ACI INF FoI Team who will advise accordingly. In such cases it is probably best to err on the cautious side and let Press Office know anyway.

earlier decision to withhold information upheld: the reviewing officer should inform the complainant in writing of this and the reasons behind the determination. He should also advise the complainant of his 'right to appeal' to the Information Commissioner, under section 50 of the FoI Act. Details of how to appeal (including full contact details for the Information Commissioner's office) must be provided to the complainant (see above for the standard wording)

FoI handling procedures have not been properly followed: where statutory obligations have not been fully met or procedures have not been followed correctly, the reviewing officer should apologise on behalf of the Department to the complainant in writing. The reviewing officer should also confer with the original decision maker to ensure that steps are taken to prevent similar 'errors' occurring in the future

outcome mixed: e.g. some of the previously withheld information should be released, but some continues to be withheld, the reviewing officer should follow a mixture of the procedures mentioned above and discuss with the Focal Point/ACI INF.

The reviewing officer will be given support by the relevant Focal Point and/or ACI INF.

Can I refuse to answer a vexatious request?

We are not obliged to comply with vexatious requests. However the FoI Act does not define the word "vexatious".

The department may well have a number of "serial correspondents" but each request for information should be treated independently. It is important to remember that it is the request itself and not the applicant that could fall to be treated as vexatious.

The provision contained within the FoI Act at section 14(i), allowing a request not to be complied with, is not intended to include otherwise valid requests in which the applicant happens to take an opportunity to vent his frustration with the department.

The Information Commissioner's general approach is that, while giving maximum support to individuals genuinely seeking to exercise the right to know contained in the Act, he will be sympathetic towards authorities where a request, which may be the latest in a series of requests, would impose a significant burden **and**:

- clearly does not have any serious purpose or value;
- is designed to cause disruption or annoyance;
- has the effect of harassing the public authority; or
- can otherwise fairly be characterised as obsessive or manifestly unreasonable

These may not be easy tests to prove as the access rights in the Act are purpose blind and the reason for making a request should not usually be taken into account. The clear message therefore is that we need to proceed with extreme caution before treating any request made under FoI as vexatious.

It is essential that **any** case where consideration is being given to treating a request as vexatious must be referred to the FoI Focal Point who will consult with ACI INF as appropriate.

The main point is that any decision to treat an individual request as vexatious would mean removing rights given under the Freedom of Information Act to that person. ACI INF would not normally wish to do so without their full consideration and possible consultation with the Department for Constitutional Affairs Clearing House and/or the Information Commissioner.

For any possibility of agreeing that the case is potentially vexatious, there must be detailed records of requests since 1 January 2005 and a clear argument set out supporting the case for treating the request as vexatious.

We are more likely to receive a sympathetic hearing from the Commissioner if we can demonstrate the factors outlined above.

Additional factors to be taken into account, and passed to the Focal Point, when thinking of a vexatious classification are:

- your knowledge of the applicant
- use of abusive or threatening language?
- length of the request
- use of an obvious pseudonym

- the applicant makes clear his or her intention
- you have independent knowledge of the intention of the applicant

Can I refuse to answer a repeated request?

We do not have to comply with repeated or substantially similar requests from the same person other than at reasonable intervals.

As with “vexatious” the FoI Act does not define what a “reasonable interval” is, therefore a degree of common sense needs to come into play.

A major consideration may well be the content of the information previously provided and whether there has been any change in that information in the time since the initial and the repeated request.

It is difficult to give specific guidance on how to handle each request as many factors may need to be considered. In any such situation please seek further guidance from your Focal Point.

What is the status of information held on back-up servers?

Information on a back-up server is not regarded as being held for the purposes of FoI. Such information must have been deleted “twice” in order to claim that it falls outside the scope of the Act:

- the information should have been sent to the recycle bin and
- the information should have been deleted from the recycle bin to the back-up or non-live system

This means that information located in desktop recycle bins would be subject to the Act as it has only been deleted once. On the other hand, information sent to the back-up server is no longer readily retrievable for business purposes, and unscrambling it would be “unreasonable” for the purposes of FoI. When sending information to back-up servers, the intention should be that it is never to be accessed again.

A paper-based scenario that is analogous to this would be information that is put into a refuse bag and then disposed of. Putting the information into the refuse bag would constitute the first deletion and still remain held; sending this information in the bag to a refuse site would constitute the second deletion, and at this point no longer held by the public authority.

Will I need to report on FoI requests?

DWP has a duty to report to the Department for Constitutional Affairs on how Freedom of Information is being taken forward. This monitoring will be conducted by ACI INF with information being supplied by the Focal Points.

However, only certain requests will be formally monitored by the Focal Points as Fol requests. These are cases where:

- any information, whether in full or in part, is refused or
- a fee is to be charged (however this is extremely unlikely within DWP) or
- where information has been provided following advice from the Focal Points

Your business unit Focal Point should be contacted in any case where you think that information should be withheld or you think that a fee may be applicable.

Freedom of Information (Fol): Frequently Asked Questions

How will the Department be affected by Fol?

As a customer facing department, DWP already provides huge amounts of information to our customers about benefits, child support and back to work services on a daily basis. This “normal business” will continue as normal under Fol. There will probably be an increase in requests for information about policy matters, for example. These are likely to be dealt with by the Central Directorates or via Ministers.

Who should I talk to for advice on specific cases?

Your Focal Point and/or ACI INF, contact details can be found on the [Intranet](#)

When exactly do the provisions of the Freedom of Information Act 2000 take effect?

The right of access to information came into force on 1st January 2005

Will there be a standard, formal procedure to follow in making and accepting requests?

No, as all requests for information received after 1 January 2005 will technically be Fol requests. This includes requests that we would normally consider as part of our normal day to day business. Different business units will have varying methods of post opening and allocation etc. However, there are a number of letters provided within this Pack which should help you to reply in most circumstances

http://intranet/1/corp/sites/lspg/aciinf/dpfoi/foi/draft_letters/index.asp#TopOfPage

What is the timetable for providing responses under Fol and when does the clock start ticking i.e. is this on first entry into the Department?

The timescale for reply is 20 working days. The clock starts ticking on the day following receipt of a **valid request** which would therefore be day 1 in calculating the 20 days.

If we need to seek further clarification of the request because it cannot be dealt with in its original form then the clock stops and starts afresh from zero once the clarification/new request has been received from the applicant.

Will the guidance on handling cases under Fol itself be disclosable?

Yes, it is disclosable as is the previous Open Government guidance.

What lengths do we need to go to establish the identity or motives of the applicant?

The Act requires that the request must be in writing, state the name of the applicant and provide an address for response. The Act is purpose blind and the reason for the request or who the applicant is should not be taken into account

How do we handle generalised requests e.g. “tell me everything about the JSA computer system”?

This would be too vague for an accurate response and it would be appropriate to go back to the applicant asking them to be more specific. But there is also a requirement on us to provide help and assistance to the applicant to refine their request. In a situation such as this the clock will stop as there is not a valid request. The clock will re-start from zero once a request that can be dealt with is received.

Is it information or documents (in the widest sense) that have to be provided under Fol?

The Act technically is about **access to information**, however departmental policy is to issue documentation wherever possible.

Can suitably sensitive documents that meet exemption criteria be noted “Not for Disclosure under Fol”?

This would not be a useful classification as the sensitivity of documents and hence the applicability of exemptions tends to decline with the age of the document. Neither could any such marking pre-empt the considerations and judgements that have to be made on a case by case basis if requests are received.

Are reports produced for ‘management’ by Internal Assurance Service (IAS) for example “owned” by IAS or management? Who decides whether information can or should be disclosed?

Decisions on disclosure are to be made by the person closest to the information and who is best placed to make a properly considered decision. The decision on who is best placed to respond will, in this instance, fall to IAS and their client to decide, with the respondent fully consulting the other stakeholder.

Are internal telephone directories releasable under Fol? (for example, currently we do not publish the names of fraud investigators outside the Department for safety reasons).

Businesses and their individual parts across the Department currently follow different practices in this regard with some releasing staff directories proactively. Accordingly, requests for directories would have to be considered on a case by case basis. However, it seems likely that exemption 30, investigations and proceedings conducted by public authorities, could be applied to directories of fraud investigators.

Will out of hours contacts (e.g. in Business Continuity Plans) have to be released? Some phone numbers could be ex-directory.

These could be withheld, as there is an exemption (section 40) covering personal information. This would particularly cover non-work telephone numbers.

Is commercially sensitive material protected from requests for disclosure?

Yes, under certain circumstances. Exemption 43 is a qualified one and prejudice to the commercial interests must be shown before information can be withheld. Please see further guidance produced by Procurement Policy and Best Practice Branch.

http://intranlink/1/corp/sites/lspg/aciinf/dpfoi/foi/commercial_information/index.asp

What is the procedure if the information is protectively marked e.g. RESTRICTED – POLICY? Does this involve any other procedure e.g. contacting the person who classified the information and getting their agreement to its release?

A protective marking **may** be an indicator that a Freedom of Information Act exemption may be applicable, but it is not definitive. In addition, where a protectively marked document contains information for which an exemption can be claimed, consideration will still need to be given as to whether less sensitive parts of the document can be disclosed.

If a protectively marked document, or any part of it, is to be released under Fol, it must first be de-classified. As the owner of the information contained in the document is charged with taking the decision whether or not to release it, then it can be assumed that he or she has the authority to de-classify the document (although if possible the original author of the document should be consulted).

To achieve de-classification, it is recommended that the following action be taken (recognising that some requests will be for whole files of material):

- if the disclosure involves relatively few pages with a protective marking, strike through the marking ensuring that it is still legible and add, in manuscript, "declassified following an Fol request" with the relevant date and your initials

- if the material to be disclosed includes many pages with a pre-existing protective marking, include the following paragraph in the covering letter:

“You will notice that some/all [delete as appropriate] of the enclosed material still retain protective markings. These markings no longer apply”

If any request under Fol is received covering documents with a protective marking above RESTRICTED i.e. CONFIDENTIAL, SECRET or TOP SECRET, ACI INF must be contacted before any information is released.

If a request is received covering a protectively marked document concerning material relating to protective security or has the descriptor "security" attached, the Departmental Security Officer must be contacted before any information is released.

Information provided in relation to actual or future investigations is covered by exemptions. But is internal guidance on how to conduct investigations (marked RESTRICTED) similarly covered?

DCA Guidance makes it clear that exemption 30 (Investigations and proceedings conducted by public authorities) covers details of plans or investigative techniques for tackling crime, where release would be likely to give an outside party an undue advantage or would compromise our systems/ability to function.

The “Restricted” marking would not have any relevance in itself. Security classifications in their own right would not justify non-disclosure. Each case should be looked at afresh if a request is made.

Is information provided “in confidence”, for example under the Public Interest Disclosure Act (PIDA), covered by an absolute exemption? For example, is information provided by the Whistleblowers’ Hotline, irrespective of whether there is a subsequent investigation, protected from disclosure requests?

The ‘in confidence’ exemption is very specific and relates to cases where disclosure would constitute an actionable breach of confidence. PIDA itself may place restrictions on further disclosures which would make it exempt under Fol.

If the information discloses personal information, then we would need to consider whether disclosure would breach any Data Protection Act provision.

Additionally exemption 30 may apply which states that information is exempt “if it was obtained” for the purposes of any functions relating to any investigation.

Can we refuse to release information (sought in good faith) if its subsequent publication could be of use to undertake criminal acts? For example, information around how our IT networks are protected and what security software we are using could be of use to hackers.

Yes, such information would be exempt. Always seek guidance from your Focal Point/ACI INF.

Can documents be summarised in all or in part, as opposed to releasing actual extracts of text?

Although allowable under the Act (and indeed a summary may be asked for by the applicant) DWP policy is to discourage production of summaries because of the leeway that would provide for editorial discretion and the attendant resource implications.

A summary also provides for the possibility of taking things out of context and distorting the original information. In any event, the Act also obliges us, where possible, to respond in the manner requested, which may mean provision of a specific document or extracts there from.

Who will be responsible for responding to requests, especially those covering several subjects? How do ACI INF envisage co-ordination within a Department of 135,000 + people?

Responsibility for responding to requests lies with the owner of the information in question. Multiple requests will need a greater deal of co-ordination but this is as much an operational matter as a policy one and should be no different than providing an answer to a cross-cutting Parliamentary Question for example. ACI INF will be happy to put different parts of the business in touch with FoI Focal Points in other business areas but will not generally act as co-ordinator, unless the request ends up in the hands of the Information Commissioner.

What lengths do we have to go to in providing the information requested e.g. file searches, recalling papers from archives, etc?

If the request has been narrowed down to specific information held in an archived file at, say, Heywood stores, then it should be recalled. This may need to involve some expert assistance from Departmental Records Office staff. In most cases however, retrieval should be easy to achieve using the services of the appointed contractor, CAPITA.

If the information we know exists can't be found in archives do we simply say it is not available/can't be located?

The Act requires the applicant to be told whether or not the information is held and if so to be given access to it. We should therefore make every effort to track it down and if no success, explain why the request cannot be dealt with fully. If the information is archived, has the applicant adequately narrowed down his request (with our help)?

Will there be a central database of requests received and decisions taken?

No, FoI is very much business as usual in DWP and attempting to log the many thousands of requests for information received every year would be too onerous

and have no business justification. However the Focal Points will be keeping their own records of those cases to be formally monitored and will forward this information to ACI INF for quarterly monitoring reports or as requested if *ad-hoc* reports are required.

How will we ensure that a consistent approach is taken (a) within DWP and (b) across Government e.g. the same request could be allowed by one unit and yet refused by another?

Each request must be considered on its own merits and it is feasible that government departments may take a different slant based upon their own business needs. 'Round-robin' requests to a number of departments will be co-ordinated by the Department for Constitutional Affairs with ACI INF providing them with the Departmental contact. Consistency of approach internally will be promulgated by ACI INF for difficult cases and through the Focal Point network more generally.

What if we fail to provide information because the responding unit is simply not aware that information resides elsewhere in DWP? If relevant information subsequently comes to light, do we have to go back to the applicant and provide a revised response?

If we were not aware of information, and it was not specifically requested, then it is not strictly necessary to go back to the customer if it comes to light in the future. However this is as much a customer care issue and, depending on the nature of the original request and the impact the new information may have, it may be appropriate to go back but each situation needs to be assessed on its own merits.

What is the position in relation to information that supersedes or is not consistent with that already given to Parliamentary Questions & Parliamentary Committees? Will we have to provide updated responses?

Guidance on Pursuant replies remains unchanged. There is also the question of whether or not there is a need to update an external requester. In that case, if a clear error is found in the information supplied then it would be appropriate to go back to the requester with a correction. However, this does not apply to routine revisions to data or information for different time periods.

Can we use "disproportionate costs" as a genuine reason for not pursuing a request?

There is a disproportionate costs concept contained in the Act, broadly equivalent to that for answering PQs (presently £600). However, DWP has in the past answered some PQs and met Open Government requests that go over the disproportionate costs figure. A good test is 'Would you provide this information if asked for in a PQ?'

If you think that the costs of retrieving the information will exceed £600 you may need to seek clarification or narrowing of the request to bring it within

the cost threshold see

http://intraLink/1/corp/sites/lspq/aciinf/dpfoi/foi/foi_focal_point/dwp_d028643.asp#TopOfPage.

Always discuss the possibility of Fees with your Focal Point immediately.

Further guidance on charging for Fol requests can be found in Part II of this Pack. However it should be borne in mind that charges will be extremely rare as departmental policy is not to charge.

At what level does the Public Interest Test need to be conducted to ensure consistency e.g. G7?

If the Public Interest test is to be considered then, by nature of the judgement to be applied, this should be conducted at HEO level at least but could be much higher depending on the political sensitivity of the material concerned.

How are cases where we refuse to release information to be handled? Will this be handled by the Information Commissioner?

Any refusal to release information must first be discussed with your Focal Point who will liaise with ACI INF. If the information is withheld, the applicant is advised why the information is being refused and that he may ask for an internal review of the decision, carried out by a more senior officer. If still unhappy, he may then approach the Commissioner. This is no different to [previous Open Government procedures](#).

Does there need to be any clearance with Ministers or ACI INF before claiming exemptions under Fol?

See preceding answer.

If the Information Commissioner requests information of DWP, who will handle this within the Department?

In following up a complaint, the Commissioner should alert the central Fol team (ACI INF). If however his office contacts the person who made the decision that is under review, **your Focal Point and ACI INF should be advised immediately.**

The central Fol team will then liaise with the Focal Point and information owner who will provide a draft response to the Commissioner which ACI INF will despatch.

If a decision notice is issued by the Information Commissioner, what options do we have if we disagree with the decision to release information?

There is a right of appeal through the Information Tribunal. However, the expectation is that reaching this stage would be exceptional for DWP.

Would we be required to check the mailboxes & 'My Documents' of staff or simply rely on them to provide the documents/information? Will existing disciplinary procedures cover instances of where staff fail to co-operate or destroy material deliberately to prevent disclosure?

This would not be a standard requirement but you may need to ask yourself 'Where would I look if I wanted this information for myself?' The Act has a new criminal offence of deliberately tampering with information to prevent disclosure.

If we ask Ministers to sign an exemption certificate, do these have to be laid before Parliament? What will be the procedure? Is there a time limit?

Section (exemption) 23 certificates relate only to information supplied by bodies dealing with security matters to (for example) DWP. Section 23 certificates can only be signed in respect of specific information and cannot be general or prospective. They do not have to be provided to the requester, so there is no specific time limit. Certificates can be appealed at the Information Tribunal. They do not need to be laid before Parliament.

Freedom of Information: Quick Quiz

Please note that there may be more than one correct choice to some answers.

1. What does Fol stand for?
 - a) Foreign Office Initiative
 - b) Freedom of Information
 - c) Fun on Intercity
2. When do Fol access rights come into force?
 - a) Already have done
 - b) 1 January 2005
 - c) 1 November 2005
3. What, if anything, do Fol access rights replace?
 - a) The Code of Practice on Access to Government Information
 - b) Environmental Information Regulations
 - c) Data Protection Act
4. Which parts of DWP are covered by Fol?
 - a) Only Central Services
 - b) Only DWP and not NDPBs
 - c) Only DWP archive material

- d) All parts
5. The statutory deadline for reply to an FoI request is:
- a) 20 working days
 - b) 40 calendar days
 - c) 14 working days
 - d) within timescale we consider reasonable
6. Who can make an FoI request?
- a) Anyone of any nationality for any reason
 - b) UK citizens only
 - c) Only those who have a good reason
 - d) Only MPs, MEPs, and Peers
7. Which, if any, of these requests is not a valid FoI request?
- a) A telephone call quoting the Act
 - b) A letter quoting the Act
 - c) An e-mail that does not quote the Act
 - d) A PQ
8. The two categories for exempting material are called
- a) strong and weak
 - b) full and partial
 - c) class and case-by case
 - d) absolute and non-absolute
9. Information can be exempt from disclosure if
- a) Embarrassment will be caused to Ministers
 - b) It relates to personal information
 - c) It is in an unstructured file
 - d) It is held at DRO or National Archives
10. Which of the following are absolute exemptions
- a) prejudice to economic interests of the UK
 - b) accessible to applicant by other means
 - c) formulation of government policy
 - d) personal information
11. The Public Interest test must be considered
- a) in all cases
 - b) where personal information is involved
 - c) if a non-absolute exemption applies
 - d) if an absolute exemption applies
12. Government responsibility for FoI lies with
- a) Home Office
 - b) Cabinet Office
 - c) Department for Work and Pensions
 - d) Department for Constitutional Affairs

13. If you have an enquiry about FoI, who should you contact?

[Answers](#)

Freedom of Information: What would you do?

The following are real requests made to DWP under the Code of Practice on Access to Government Information (the "Open Government Code").

If you received the same, or similar, requests under the Freedom of Information Act, how would you respond?

1. Representative of disability rights group asks for the results of surveys of 20 local offices into access & facilities for the disabled.
 - [Answers](#)
2. TV company requests details of departmental deliberations on FoI.
 - [Answers](#)
3. Individual asks for copies of claim forms/statements he has signed
 - [Answers](#)
4. A customer has been marked as PV but is disputing the marking. He has requested sight of internal guidance on PV procedures
 - [Answers](#)
5. Request for all 582 responses to the Pensions Green paper (over 6,000 pages)
 - [Answers](#)
6. A man writes in requesting on behalf of his wife that he be sent a copy of any computerised information held about her
 - [Answers](#)
7. A customer asks for a breakdown of staff numbers & grades within a specified directorate area
 - [Answers](#)
8. Question asked about cost of travel incurred by Secretary of State and how many people travel with him
 - [Answers](#)
9. A TU representative asks personnel for a list of all staff the dept has recommended for honours in the next list.
 - [Answers](#)
10. Journalist asks for a copy of the departmental Personal Information Guide and the CSA Disclosure Guide
 - [Answers](#)

11. Rival bidder for a contract wishes to obtain information about the successful bidder including details of new means of processing developed by the successful bidder.

- [Answers](#)

Analysis of Open Government Activity 1994 – 2003 (the latest year for which details are held)

Year	Number of requests	Answered within 20 working days		Refused		% of requests from individuals
		Number	Percentage	Number	Percentage	
1994	37	28	75.7	1	2.7	30
1995	46	41	89.1	6	13.	60.9
1996	198	168	84.8	10	5.0	71.2
1997	261	212	81.2	9	3.4	67.4
1998	238	204	85.7	6	2.5	84.9
1999	671	534	79.6	13	1.9	96.1
2000	791	785	99.2	13	1.6	96.6
2001	982	944	96.1	6	0.6	89.5
2002	134	98	73.1	16	11.9	55.2
2003	73	69	94.5	2	2.7	61.6

Notes:

1. For monitoring purposes, Code requests are defined as requests:
 - which specifically mention the Code
 - have a charge or fee made
 - where information is refused under one or more Code exemptions **or**
 - are handled by OG Focal Points.
2. The marked increase in the number of requests in 1999 - 2001 was attributable to an increase in CSA customers utilising the temporary provision under Open Government granting access to information in anticipation of proposed statutory rights e.g. the Freedom of Information Act)

3. The higher than average refusal rate in 2002 was due to relatively high numbers of requests from journalists which were refused on Cabinet Office advice.

Steps towards Freedom of Information

The introduction of the Freedom of Information Act is the culmination of many years of progression towards greater openness in Government. The following table highlights some of the milestones along this road.

1911

- Official Secrets Act
- Section 1 dealt with espionage. Section 2 made the unauthorised disclosure of any information on any subject an offence

1958 & 1967

- Public Records Acts
- The concept of a public record was established in 1880. The 1958 Act stipulated the release of government records at 50 years; the 1967 Act reduced this to 30 years.

1977

- Croham Directive
- Named after the then head of the civil service, promising the release of background papers to policy decisions.

1984

- Data Protection Act
- Established right of access to personal information held electronically.

1992

- Environmental Information Regulations
- Gave access to environmental information. Will be reissued and strengthened in 2005

1994

- Code of Practice on Access to Government Information
- "Open Government" – a non-statutory means of requesting government information. (Reissued in 1997)

1997

- Labour Party Manifesto
- Commitment to introduce a Freedom of Information Act

1997

- Your Right to Know
- FoI White Paper

1998

- Data Protection Act
- Replaces the 1984 DPA – extended access rights to clerical information

2000

- Freedom of Information Act
- For the first time introduced a statutory right to ask for information

2002

- Departmental Publication scheme
- November 2002

2005

- Access rights under Freedom of Information begin
- Access rights start on 1 January 2005

Freedom of Information: Foundation Pack Part III

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 - [What do the exemptions mean?](#)
- [Section 21: Information accessible to applicant by other means \(absolute\)](#)
- [Section 22: Information intended for future publication \(qualified\)](#)
- [Section 23: Information supplied by or relating to bodies dealing with security matters \(absolute\)](#)
- [Section 24: National security \(qualified\)](#)
- [Section 26: Defence \(qualified\)](#)
- [Section 27: International relations \(qualified\)](#)
- [Section 28: Relations within the United Kingdom \(qualified\)](#)
- [Section 29: The economy \(qualified\)](#)
- [Section 30: Investigations and proceedings conducted by public authorities \(qualified\)](#)
- [Section 31: Law enforcement \(qualified\)](#)
- [Section 32: Court records \(absolute\)](#)
- [Section 33: Audit functions \(qualified\)](#)
- [Section 34: Parliamentary Privilege \(absolute\)](#)
- [Section 35: Formulation of government policy \(qualified\)](#)
- [Section 36: Prejudice to effective conduct of public affairs \(qualified but with absolute exception\)](#)
- [Section 37: Communications with Her Majesty and honours \(qualified\)](#)
- [Section 38: Health and Safety \(qualified\)](#)
- [Section 39: Environmental Information \(qualified\)](#)
- [Section 40: Personal information \(part absolute and part qualified\)](#)
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- [Access to personal information flowcharts](#)

Exemptions

ANY application of the exemptions must first be discussed with your Focal Point and/or ACI INF

What are the exemptions?

Whilst the Freedom of Information Act creates a right to request and receive information (a 'Right to Know' rather than a 'Need to Know'), it also creates a number of exemptions from those rights. These have the effect of permitting us to withhold some or all of the information requested, but only where that information fits the conditions of one or more of the exemptions.

The DWP approach to the release of information is a positive one; based on the assumption that **information will normally be made available unless it is specifically exempt and where disclosure is not in the public interest.**

Additionally the Information Commissioner expects public authorities to approach any request for information in the same positive way. The concept of the public interest is discussed in more detail later in this Pack.

Some exemptions, known as 'ABSOLUTE' exemptions, do not require consideration of a public interest test.

Where information falls within the terms of an absolute exemption, it is possible to withhold the information without considering any public interest arguments. However, even the application of an absolute exemption does not prevent disclosure if the Department wishes to do so.

Many of the exemptions only apply where a pressing public interest argument can be made for withholding the information.

In other words, information which falls into a particular exemption category (for example, National Security) will nevertheless have to be disclosed unless it can be successfully argued that the public interest in withholding it is greater than in releasing it. **These exemptions are known as 'QUALIFIED' exemptions.**

Further detail on each exemption is included later in this section.

Prejudice test

Some of the exemptions (see table below) also contain a prejudice test which must be further applied if the public interest test is pointing towards non-disclosure.

Always consult ACI INF regarding application of the prejudice test.

Does the 20 day timescale for reply still apply?

Where a request for information is made and it is intended to rely upon an exemption to withhold some or all of the requested information, the applicant must be given an explanation of this. In most cases this explanation should be supplied within twenty working days of the request being received.

When considering qualified exemptions, it is possible that we may need longer to consider where the public interest lies. In these circumstances we are entitled to claim a reasonable, additional period for deliberations. In such a case we must inform the applicant, within the initial 20 day response period, that we are considering the public interest test and provide an estimate of when a final response is expected. **Any part of the request which can be complied with at this stage should be**, i.e. any of the information that is not exempt or is not being considered as such should be provided in advance of the decision on the exempt material.

Is information ‘time-sensitive’?

Yes. The sensitivity of any particular piece of information will usually decrease as time goes on. Additionally, most of the exemptions are time limited. Part VI of the Act makes provision for many of the exemptions to expire in relation to information held in certain records, often when those records become 30 years old.

What are the obligations if a request is received for information that is due for destruction?

If the information is contained within a record that is due for destruction within 20 days of the request being received, there is no requirement to release the information.

However, it may be worth considering the following points of best practice:

- delay destruction until disclosure has taken place
- under the duty to offer advice and assistance, identify whether another authority holds the information, and inform the applicant accordingly.
- offer to provide similar or related information if this is appropriate.

QUALIFIED EXEMPTIONS

The majority of exemptions fall into this category.

These require us to first consider whether the exemption applies and if so, to then consider the public interest test.

Only where the public interest in refusing access to the information outweighs the public interest in disclosing it can the exemption be used.

Those exemptions that carry the additional prejudice test are marked (P). The exemptions are listed in order of appearance in the Act.

- 22:** Information intended for future publication.
- 24:** National security (other than information supplied by or relating to named security organisations, where the duty to consider disclosure in the public interest does not arise.)
- 26 (P):** Defence
- 27 (P):** International relations
- 28 (P):** Relations within the United Kingdom
- 29 (P):** The economy
- 30:** Investigations and proceedings conducted by public authorities
- 31 (P):** Law enforcement
- 33 (P):** Audit Functions
- 35:** Formulation of government policy, etc
- 36 (P):** Prejudice to effective conduct of public affairs (except information held by the House of Commons or the House of Lords which falls to an Absolute exemption)
- 37:** Communications with Her Majesty, etc and honours
- 38 (P):** Health and safety
- 39:** Environmental information
- 40:** Personal information.(concerning a third party i.e. not the applicant themselves where disclosure would breach one of the Data Protection principles)
- 42:** Legal professional privilege
- 43 (P):** Commercial interests

Where it is considered that the public interest in refusing access to the information outweighs the public interest in releasing it, we must inform the applicant of the reasons for this decision.

ABSOLUTE EXEMPTIONS

These are the exemptions where, if the exemption applies, it is **not necessary to go on to consider disclosure in the public interest**. However, the existence of the exemption does not **prevent** you from disclosing the information.

- 21:** Information accessible to applicant by other means
- 23:** Information supplied by, or relating to, bodies dealing with security matters (a certificate signed by a Minister of the Crown is conclusive proof that the exemption is justified - there is a separate appeals mechanism against such certificates)
- 32:** Court records, etc
- 34:** Parliamentary privilege (a certificate signed by the Speaker of the House, in respect of the House of Commons, or by the Clerk of the Parliaments, in respect of the House of Lords is conclusive proof that the exemption is justified).
- 36:** Prejudice to effective conduct of public affairs (only applies to information held by House of Commons or House of Lords)
- 40:** Personal information (where the applicant is the subject of the information). The applicant already has the right of 'subject access' under the Data Protection Act 1998. Where the information concerns a third party and disclosure would breach one of the Data Protection Principles a qualified exemption applies – see table above)
- 41:** Information provided in confidence.
- 44:** Prohibitions on disclosure where a disclosure is prohibited by an enactment or would constitute contempt of court.

What do the exemptions mean?

The following paragraphs give a brief summary of what each exemption means from a DWP perspective.

Following each exemption is a hyperlink to more detailed information provided by the Department for Constitutional Affairs (DCA). Additionally, for some exemptions, DCA have produced "Working Assumptions on applying the exemption).

However please remember that the **DCA guidance and Working Assumptions should not be used to apply an exemption without prior discussion with**

your Focal Point and/or ACI INF. Additionally, they should not act as the sole or main reason for applying an exemption. The use of any exemption must be supported by your own arguments for and against disclosure and the DCA guidance can only be used as an indicator.

Section 21: Information accessible to applicant by other means (ABSOLUTE)

Information which is “reasonably accessible to the applicant” is exempt. The act does not define “reasonably accessible” and this will be a question of fact in each case.

Impact on DWP: In broad terms this exemption refers to information contained in the department’s Publication Scheme or it is a priced publication available through HMSO or elsewhere. **It is important therefore that as much information as possible is placed on the Scheme at the earliest opportunity.**

In addition to the Publication Scheme, this exemption also covers any information which the Department is obliged by any enactment to make available either by way of publication or on request.

[Further details](#)

Section 22: Information intended for future publication (QUALIFIED)

This information is exempt if it is intended for future publication. This applies, whether or not the date for future publication has been determined **and** where it is reasonable that the information should not be disclosed until the intended date of publication.

Impact on DWP: Could be potentially high in light of the sheer number of reports, consultation documents etc that the department produces. Whether or not we intend to publish particular information will be a matter of fact in considering this exemption.

Whilst not specified in the Act, in practice DWP would generally only rely on this exemption if publication is due in the not too distant future or is scheduled for planned release on a regular basis.

[Further details](#)

Section 23: Information supplied by, or relating to, bodies dealing with security matters (ABSOLUTE)

This exemption relates to all information supplied directly or indirectly to DWP by, or relating to certain named bodies dealing with security matters. These bodies include:

- the Security Service

- Secret Intelligence Service
- GCHQ and
- the Special Forces.

A certificate signed by a Minister of the Crown is conclusive proof that the exemption is justified.

Impact on DWP: This exemption relates to specified bodies only and may not include for example Special Branch or NCIS with whom the department may have contact. Departmental information from or about these organisations would have to be considered in light of other exemptions which may apply. Further guidance will be given on this.

There may be information held by the Departmental Security Officer (DSO) which falls under this category. If this is the case DSO (in consultation with ACI INF) should consider preparing a Ministerial Certificate at an early stage when dealing with a request for information which may be exempt under section 23. [Further details](#)

Section 24: National security (QUALIFIED)

Information which does not fall within section 23 is exempt where the exemption is required to safeguard national security.

A certificate signed by a Minister of the Crown is conclusive proof that the exemption is justified.

Section 25: This is not an exemption but makes provision for the certificates mentioned in relation to sections 23 & 24.

Impact on DWP: Again, use of this exemption is subject to a Ministerial Certificate and would probably only relate to information held by for example, the Departmental Security Officer.

However, information could also be held by other parts of the Department about terrorist suspects cited by the United Nations in order that UK benefits could be withheld in an attempt to prevent funding reaching terrorist groups.

The Department could be asked how many terrorist suspects have had their benefit withheld under these circumstances. Whilst exemption 40 concerning personal information may come into play in this situation, it is feasible that some information may also fall under this exemption. [Further details](#)

Section 26: Defence (QUALIFIED)

Exempts information whose disclosure would, or would be likely to, prejudice the defence of the British Isles or any colony. It also exempts information that would prejudice the capability, effectiveness or security of the armed forces.

Impact on DWP: Unlikely to have any substantial impact in DWP. [Further details](#)

Section 27: International Relations (QUALIFIED)

Information is exempt if its disclosure would, or would be likely to, prejudice relations between the United Kingdom and any other state or any international organisation or court.

There is no duty to confirm or deny whether the information is held if to do so would, or would be likely to, prejudice any of the matters mentioned above, or would involve the disclosure of information which is confidential information obtained from a State other than the UK, or from an international organisation or court.

Impact on DWP: Not known at this time. The equivalent exemption under the Open Government Code was seldom, if ever, used. However International Directorate may receive more requests under Fol and experience will inform any future guidance.

[Further details](#)

Section 28: Relations within the United Kingdom (QUALIFIED)

Information is exempt if its disclosure would, or would be likely to, prejudice relations between any administration in the UK and any other such administration.

“Administration in the UK” is defined as:

- the government of the UK
- the Scottish Administration
- the Executive Committee of the Northern Ireland Assembly or
- the National Assembly for Wales.

This exemption cannot be claimed in respect of information contained in an historical record.

Impact on DWP: Future demand for information that may fall under this category is unknown. However it is worth noting that information can only be subject to ONE regime.

DWP is covered by the UK Fol legislation whilst Scottish Fol covers only Scottish public authorities.

Information marked “in confidence” and passed by DWP to Scottish public authorities, e.g. Scottish local authorities, is **excluded** from the scope of the Scottish Fol Act. In effect, the Scottish authority is NOT holding the information and any request for it to the Scottish public authority would be referred back to the originating department.

[Further details](#)

Section 29: The economy (QUALIFIED)

Information is exempt if its disclosure would, or would be likely to, prejudice the economic interests of the UK or any part of the UK; or the financial interests of any administration in the UK as defined for section 28 above.

Impact on DWP: It is difficult at the moment to judge the likely impact on FoI requests that this exemption may have. The drafting of this exemption is strikingly wide. It is noticeable that the exemption applies where disclosure would prejudice the interests of a part of the UK. Therefore it is feasible that, for example a local authority could rely on the exemption if it thought that disclosure would prejudice the economic interests of its own area.

Were it to be disclosed that changes were being considered to the tax system, for example, this could lead people to alter their financial arrangements so as to pre-empt the possible changes, to the detriment of the financial interests of the government.

A DWP example along the above lines is where changes are being considered to private pensions legislation where we would want to avoid 'closing down' sales. There is a risk that, because the Pension Protection Fund (PPF) will compensate scheme members if their employer has become insolvent and the pension scheme is under funded, employers will deliberately manipulate their affairs so as to shift their pension scheme deficits to the PPF, thus increasing the PPF levy costs for responsible employers.

The Pensions Act 2004 contains provisions designed to mitigate the risk of this to safeguard the integrity and sustainability of the PPF and avoid placing an unfair burden on responsible levy payers. Had the detail of these provisions been known in advance of their introduction in Commons Committee on 27 April 2004 , including the date from which they were to have effect, it may have enabled unscrupulous employers to manipulate their affairs accordingly. [Further details](#)

Section 30: Investigations and proceedings conducted by public authorities (QUALIFIED)

Information held at any time for the purposes of a criminal investigation or criminal proceedings conducted by it.

Also exempt is information relating to the obtaining of information from confidential sources, e.g. informers, if it was obtained or recorded for the purposes mentioned above including civil proceedings which arise from such investigations.

This exemption cannot be claimed in respect of information contained in an historical record.

Impact on DWP: Likely to be high in relation to information held by Fraud for example.

DCA Guidance makes clear that this exemption covers details of plans or investigative techniques for tackling fraud/crime, where release would be likely to give an outside party an undue advantage or would compromise our systems or ability to function.

This exemption also states that information is exempt “if it was obtained” for the purposes of any functions relating to any investigation. [Further details](#)

Section 31: Law enforcement (QUALIFIED)

This section exempts information whose disclosure would, or would be likely to, prejudice certain specified law enforcement matters including, but not exclusively:

- the prevention or detection of crime;
- apprehension or prosecution of offenders;
- the administration of justice and
- the assessment or collection of any tax or duty.

Impact on DWP: Medium to high; this exemption covers information that is not exempt information by virtue of section 30 and relates specifically to law enforcement rather than any prior investigative process.

[Further details](#)

Section 32: Court Records (ABSOLUTE)

Information is exempt if it is held solely by virtue of the fact that it is contained in documents filed with, or placed in the custody of, a court; or served upon, or by, the department for the purposes of proceedings; or created by a court. “Court” includes any tribunal or body exercising the judicial power of the State.

This exemption cannot be claimed in respect of information contained in an historical record.

Impact on DWP: Small. The information covered is that which is held “only by virtue” of being contained in documents which have been:

- filed with or otherwise placed in the custody of a court (**or tribunal**), or
- served upon or by a public authority, for the purposes of court proceedings (including inquests and post mortem examinations), or placed in the custody of a person conducting an inquiry or arbitration or the purposes of that inquiry or arbitration, or
- created by a court or member of the administrative staff for the purposes of court proceedings, or

- created by a person conducting an inquiry or arbitration for the purposes of that inquiry or arbitration

This exemption is unusual in that it seeks not to protect the information but rather to exempt from disclosure the fact that the information is contained in a court record or a document held for the purposes of an enquiry or arbitration. [Further details](#)

Section 33: Audit functions (QUALIFIED)

This section exempts information that would prejudice the exercise of functions in relation to the audit of accounts of other public bodies and the examination of the economy, efficiency and effectiveness with which the other bodies use their resources to discharge their public functions.

This exemption cannot be claimed in respect of information contained in an historical record.

Impact on DWP: Should be minimal since this exemption applies only to departments who have functions in relation to other public authorities and can only be claimed by the body carrying out the audit. It does not cover internal audit functions (nor, for example, dealings with NAO in this context).

[Further details](#)

Section 34: Parliamentary Privilege (ABSOLUTE)

This exemption applies if disclosure would lead to an infringement of the privileges of either House of Parliament.

A certificate signed by the Speaker of the House of Commons or the Clerk of the Parliaments is conclusive proof that the exemption applies.

Impact on DWP: Minimal. An example of when this exemption would apply is in the giving of evidence before either House or Committee of the House.

Privilege in this context is a matter of constitutional law, which is not in itself regarded as a reason for secrecy. But as a matter of constitutional law, privilege is of the utmost importance for the effective working of Parliament as it protects the rights of Parliament to operate independently, without interference from external sources.

It should be borne in mind that any person breaching privilege may be punished by Parliament; failure to engage this exemption may therefore carry serious sanctions. Any impact would probably fall on central directorates, if at all.

[Further details](#)

Section 35: Formulation of government policy (QUALIFIED)

This section exempts information that relates to the formulation or development of government policy; Ministerial communications; Law Officer's advice or the operation of a Ministerial office.

The exemption cannot be claimed in respect of information contained in an historical record

Statistical information

Once a decision on the policy has been taken, any statistical information used to provide an informed background to the decision is not to be regarded as relating to the formulation or development of government policy, nor as relating to Ministerial communications.

Factual background information

Section 35(4) states that in balancing the public interest in maintaining an exemption against the public interest in disclosure, regard has to be had to the particular public interest in disclosing factual information which has been used, or is intended to be used, to provide an informed background to decision-taking. This is the only provision in the Act that gives specific guidance as to how the balancing test in relation to qualified exemptions is to be carried out.

During the third reading of the FoI Bill in the House of Lords, Lord Falconer of Thoroton, Minister of State at the Cabinet Office stated –

'I also emphasise that the government believe that factual information used to provide an informed background to decision- taking will normally be disclosed.'
[HL 3R, 24 October 2000, col 297]

Impact on DWP: High. The equivalent exemption in the Open Government Code is the most regularly used and it is expected to be one of the most used exemptions under FoI.

It is accepted that whilst being open wherever possible that we should also robustly defend the policy making process. Section 35 ensures that nothing in the Act should put at risk the business of government. The exemptions in the Act protect the space around Ministers and their advisors. This space consists of:

- correspondence between Ministers;
- the operation of private offices;
- the handling of expenses;
- ministerial diaries;
- the discussion of collective policy in Cabinet and its Committees;
- internal Departmental policy development and debate; and
- the candid exploration of policy issues with outsiders, domestically and internationally.

This principle may also extend to the space needed by management teams, for example, to consider options and courses of action. This could include discussions about the viability of individual offices, staffing considerations, etc.

This will be confirmed at a later date and guidance amended as appropriate. In any case, such information should be discussed with your Focal Point and may well be exempt under another exemption.

[Further details](#)

Section 36: Prejudice to effective conduct of public affairs (QUALIFIED - except for information held by the House of Commons or the House of Lords which is ABSOLUTE)

This exemption primarily **relates to information held by a government department that is not exempt under section 35.**

The exemption only applies if, in the reasonable opinion of a specified qualified person e.g. a Minister of the Crown, disclosure would prejudice issues such as maintenance of the convention of the collective responsibility of Ministers of the Crown.

This exemption cannot be claimed in respect of information contained in an historical record.

Impact on DWP: Difficult to quantify. This exemption is a hard one to apply. It is subject to a prejudice test and needs to have the formal consent of a Minister that in their reasonable opinion the exemption applies.

The exemption relates not only to the maintenance of Ministerial collective responsibility but also to information whose disclosure would “**otherwise prejudice**” or would be likely to prejudice the effective conduct of public affairs. However, neither the Act nor its attendant guidance defines “public affairs”.

As the use of the word ‘otherwise’ in the previous paragraph indicates, this provision deals with situations other than those spelled out in the rest of the exemption. The Lord Chancellor made it clear in debates on the FoI Bill “that situations might arise which could not be foreseen where some sort of exemption was nonetheless necessary”.

Because the exemption is so broad, it will need to be explained very precisely to the applicant how the conduct of public affairs would be prejudiced by disclosure. As case law for the Act develops, uses of this provision of section 36 will be considered in the clearing house. ACI INF will update this guidance as and when case law develops on this exemption.

[Further details](#)

Section 37: Communications with Her Majesty and honours (QUALIFIED)

This is a narrow qualified exemption that relates to communications with Her Majesty, other members of the Royal Family or with the Royal Household or the granting of any honour or dignity by the Crown.

Impact on DWP: This exemption should not be too onerous to consider or apply. Its most probable impact may be on the 'SCS and Honours Team' who process nominations.

[Further details](#)

Section 38: Health and safety (QUALIFIED)

Information is exempt if its disclosure would, or would be likely to, endanger the physical or mental health of any individual or endanger the safety of any individual.

Impact on DWP: Minimal to medium, this exemption is not about 'Health & Safety' information in general terms but is very specific. It relates to information where disclosure has an evident potential for the kind of endangerment to which this exemption applies but does have to be about a particular named person.

Examples of such harmful disclosures which may involve DWP information are where:

- disclosures might reveal points of vulnerability or potential vulnerability in particular buildings, structures or systems, or methods to protect their occupants from interference or attack. This might include for example floor plans of government buildings or security arrangements at public transport facilities, or details of computer security systems;
- it would allow individuals, groups or firms to be identified or located and consequently targeted and attacked for their beliefs or practices, including work in controversial scientific areas;
- disclosure of plans and policies relating to the accommodation of individuals, or groups of individuals, where disclosure could lead to their being threatened or harassed e.g. asylum seekers;
- disclosure of sensitive or graphic information about deceased individuals could cause serious distress to particular individuals if disclosed, particularly if they were not previously aware of it.

[Further details](#)

Section 39: Environmental information (QUALIFIED)

Disclosure of certain environmental information is governed by the Environmental Information Regulations 2004 which come into force on 1 January 2005. The purpose of the exemption is to ensure that disclosure of environmental information is governed by the Regulations made in order to implement the Aarhus Convention and not by the general provisions of the Freedom of Information Act 2000.

Impact on DWP: Medium to high. Specific guidance on how to handle requests for environmental information is issued by Sustainable Development and can be found at

http://intranet/1/corp/sites/lspg/aciinf/dpfoi/foi/environmental_information/index.as

[p#TopOfPage](#) or you can contact Bianca Schofield on 0113 230 9704, or Jane Cony on 01604 446285

[Further details](#)

Section 40: Personal information (Part **ABSOLUTE and part **QUALIFIED**)**

Information about the applicant - section 40(1) (ABSOLUTE**)**

Where the applicant makes a request for information about himself, this attracts an absolute exemption under Fol and there is no need to consider the public interest test.

The effect of section 40(1) is not to deny an individual the right of access to his own personal information. Rather, it is to ensure that the right of access is exercised not under section 1 of the Freedom of Information Act but under the provisions of sections 7 to 9 of the Data Protection Act (subject access rights).

Information about a third party i.e. someone other than the applicant (QUALIFIED**)**

If the personal information is about someone other than the applicant the exemption would apply if disclosure would breach one of the Data Protection Principles.

Impact on DWP: Possibly high although requests for personal information about the applicant themselves should be handled under Data Protection Act provisions.

An example of a request that may relate to third party information is where someone asks for information which may contain out of hours contact details e.g. in Business Continuity Plans. Some of the phone numbers quoted could be ex-directory. These could be withheld under section 40. This would particularly cover non-work telephone numbers.

This can be a complicated area and further information on the interface between Data Protection and Freedom of Information can be found at the end of Part III of this document.

In case of any doubt always consult your Focal Point or Charles Cushing.

[Further details](#)

Section 41: Information provided in confidence (ABSOLUTE**)**

This exemption applies to information obtained from any other person, including another public authority **and** disclosure of that information would constitute an actionable breach of confidence. "Actionable" means that an aggrieved party would have the right to take a public authority to court as a result of the disclosure.

Impact on DWP: Potentially high. DWP receives a lot of information in relation to fraud for example, that we would deem to be “in confidence”. For example, is information provided “in confidence” under the Public Interest Disclosure Act (PIDA) covered by the exemptions?

Another question is whether information provided through the Whistleblowers’ Hotline, irrespective of whether there is a subsequent investigation protected from disclosure requests?

The ‘in confidence’ exemption is very specific and relates only to cases where disclosure would constitute an actionable breach of confidence.

PIDA itself may place restrictions on further disclosures which would make it exempt under FoI. If the information discloses personal information, then we would need to consider whether disclosure would breach any Data Protection Act provision.

Additionally, exemption 30 could apply. This states that information is exempt “if it was obtained” for the purposes of functions relating to any investigation and it is probable that in for example the fraud environment that exemption 30 may be more appropriate.

[Further details](#)

Section 42: Legal professional privilege (QUALIFIED)

Information in respect of which a claim to legal professional privilege, or confidentiality of communications in Scotland, could be maintained in legal proceedings is confidential information.

Legal professional privilege is a different concept to that of the more general ‘confidentiality of communications’, so where legal professional privilege does not apply the information may still attract other exemptions, in particular ‘information provided in confidence’ as defined at section 41 of the Act.

This exemption cannot be claimed in respect of information contained in an historical record.

Impact on DWP: May be significant, not just in the context of legal advice relating to prosecutions but also judicial reviews.

[Further details](#)

Section 43: Commercial interests (QUALIFIED)

This section creates two qualified exemptions to protect commercial interests. First, information is exempt if it constitutes a trade secret. Secondly, information is exempt if its disclosure would, or would be likely to; prejudice the commercial interests of any person.

“Trade secret” is not defined in the Act but it is an expression which is well understood at common law within the law of confidence as being something that a business would consider as giving it a commercial advantage over its competitors.

Impact on DWP: Possibly high in light of the wide range of contractual arrangements DWP has with external service providers. Detailed guidance on this issue is being produced by the Office of Government Commerce. Guidance specific to DWP will be produced by Procurement Policy and Best Practice [insert hyperlink to internet]

[Further details](#)

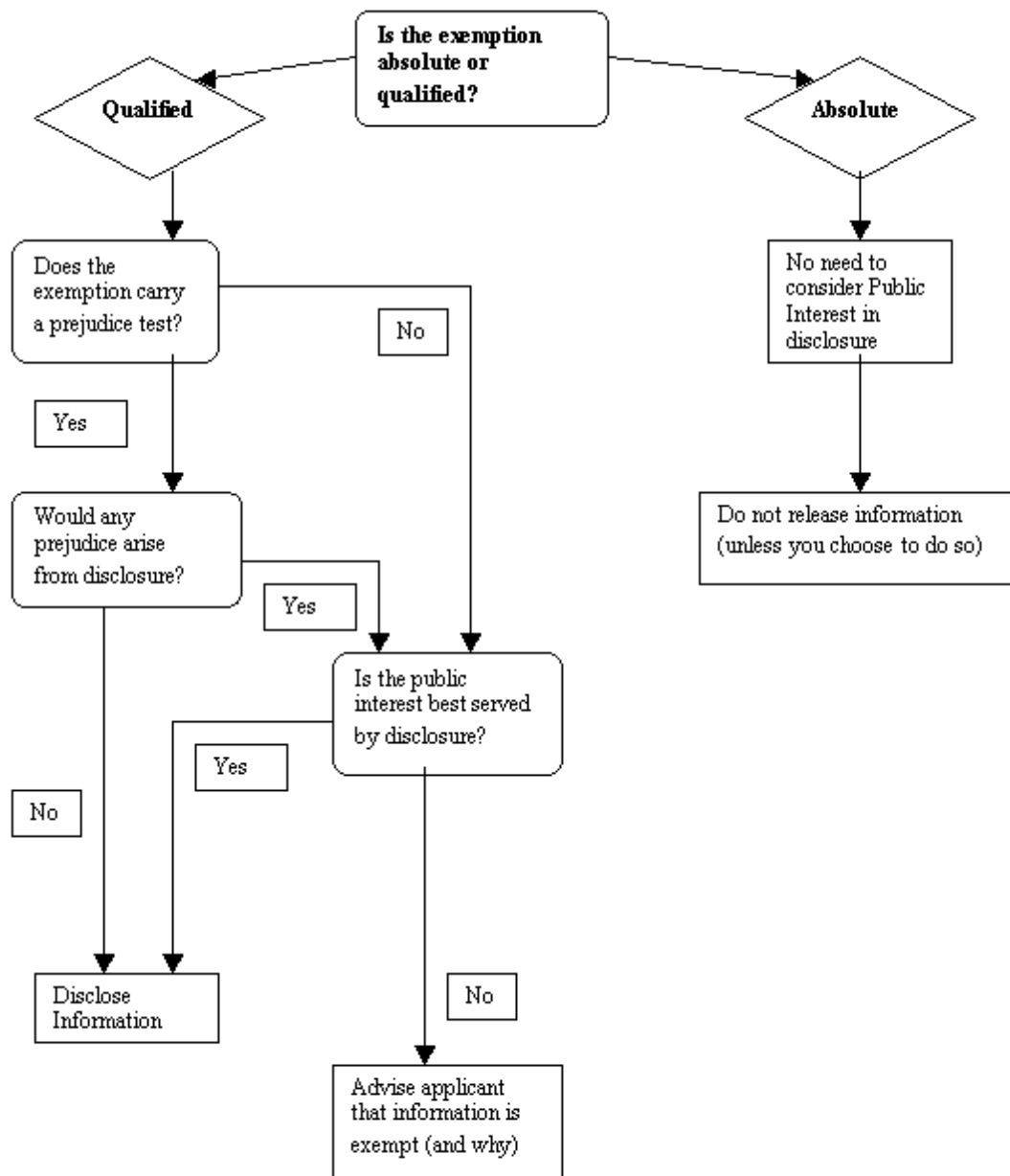
Section 44: Prohibitions on disclosure (ABSOLUTE)

Information is exempt if its disclosure is prohibited by or under any enactment; is incompatible with any European Community obligation; or would constitute or be punishable as a contempt of court.

Impact on DWP: Minimal. Departmental statutory bars to disclosure are mainly about protecting personal information and prevent officers of the department disclosing confidential personal information to a third party. These statutory bars are not incompatible with the principles behind the FoI Act but are complementary to them

[Further details](#)

Applying Exemptions



Public Interest

Apart from information covered by the “absolute” exemptions, once it has been decided that an exemption applies, we must then go on to consider whether we should override the exemption because it is in the public interest to release the information.

The main aims of the Freedom of Information Act are to:

- foster a culture of openness

- strengthen the rights of the individual
- make Government more accountable and responsive
- improve decision making by exposing information to public scrutiny
- enhance public participation in the democratic decision-making process by accepting that it is an essential right for the public to know what Government and public bodies are doing in their name.

The Act recognises that public authorities do not act in the name of, or on behalf of individuals or private interests, but on behalf of the public as a whole, **i.e. in the public interest**. This is why the decisions taken by an authority on the release of information must be taken in the public interest.

Freedom of Information is a landmark piece of legislation that will significantly change the environment and the character of the relationship between Government and the public. **Therefore the public interest lies at the heart of the Freedom of Information Act**. With this in mind the default position is that the public interest is best served by disclosure. There is no general public interest in non-disclosure.

What is the Public Interest?

The concept of 'public interest' is not a new one and has been relevant to the disclosure exemptions that applied under the Open Government Code of Practice, which has been in place since 1994. Neither is it a unique feature of the UK legislation, with virtually every FoI Act overseas containing a public interest test.

Unfortunately, there is no statutory definition or overarching guidance defining the public interest. However, it is likely that a clearer definition will be developed over time as Freedom of Information case law builds up.

Whilst the Act itself does not define the public interest, a detailed suggestion of what should and should not be considered within such a definition was provided in the written submission of the National Consumers Council to the House of Commons Select Committee on Public Administration and is a **good starting point**. Their definition includes a general public interest in:

- information being available
- individuals having access to information about themselves
- in disclosure of the reasons for most decisions
- in contributing to the maintenance of social peace and order
- in contributing to the administration of justice and enforcement of the law
- in revealing and avoiding serious malpractice, impropriety, fraud or breach of public law
- in ensuring effective oversight of expenditure of public funds; and
- in keeping the public adequately informed of any danger to public health or safety or to the environment

Additionally, there is a general public interest in the public having access to actions, policies and decisions that may impact upon their lives. There is also a

public interest in knowing how government is spending its money and to what effect.

Therefore, in essence **the public interest test involves weighing the benefits of disclosure of information against the purpose of the exemption. Where the public interest for and against disclosure is evenly balanced, information should normally be disclosed.**

Some believe that the absence of a clear statutory definition will lead to difficulty. However this should not necessarily be the case. It is clear that from time to time the weighing of competing interests in individual cases may be difficult. In effect something “in the public interest” is simply something which serves the interest of the public. When applying the test, the public interest is, in essence, simply deciding whether in any particular case it serves the interests of the public better to withhold or to disclose the information

Who has the burden of proof?

An applicant who is knowledgeable about the FoI Act and the public interest test will argue that public interest considerations outweigh the relevant exemption and that the information should be released. Other, less knowledgeable, applicants will not identify the public interest considerations either accurately or succinctly.

The public interest decision-maker has a responsibility to make his or her own assessment of these considerations in any particular case and weigh them against the public interest in maintaining the exemption.

How will the Public Interest test work in practice?

Application of the Public Interest test will involve subjective judgement of all the factors relevant to a particular request. The test will involve considering all the circumstances of each particular case and the exemption that is being considered to justify withholding the information. This is because the public interest may change over time - and will be different in relation to each request. Hence, it is necessary to weigh the factors for and against disclosure in each case. As with the Open Government Code, sensitive or political disclosure decisions will more than likely be made by Ministers with officials explaining which exemption might apply and the public interest consideration.

The balance will initially lie in favour of disclosure and information may only be withheld if the public interest in withholding it is greater than the public interest in releasing it.

The public interest test also promotes the accountability of decision making in relation to disclosure in that the exemptions that are subject to the public interest test cannot be applied in a blanket fashion. Decision-makers must be careful to ensure that the test is considered thoroughly; it is not enough to claim that there is a public interest in exempting the information requested. The nature of the

public interest has to be clearly articulated, and a decision not to disclose information may be subject to review.

If the public interest arguments are not considered rigorously and set out clearly at the time of dealing with the request, the risk of the decision being overturned at internal review is heightened. The view on the balance of the public interest once reviewed is also subject to appeal to the Information Commissioner and ultimately the courts.

If the arguments on the public interest are evenly balanced, then the outcome should normally be disclosure. If you are unsure contact your Focal Point or Charles Cushing.

Assessment of the Public Interest over time

The assessment of the balance of the public interest is also very likely to change over time. The assessment of the public interest is a judgement in which fact, policy and law are all involved to some degree. The law and practice of the balance of public interest will develop in decisions made within Government and by the Commissioner and the courts. Furthermore, the balance of the public interest will probably shift as the information becomes older.

To disclose a piece of information before or shortly after a policy decision is made may for example, within the terms of section 35, harm the formulation of government policy. However, this is unlikely to remain the case indefinitely. In any case, section 35 may not be used when the information is more than 30 years old.

The public interest therefore needs to be reviewed afresh in response to renewed requests for the information. Therefore, judgements about disclosure are not about whether it should take place at all but whether it is appropriate for it to happen at present.

Situations where the time factor may come into play are where information is confidential whilst making decisions on an office closure or in sensitive commercial dealings. However, such information may not be so sensitive once a decision has been made and implemented.

Your Focal Point or ACI INF can offer detailed advice and guidance on applying the public interest test.

Can the 20 working day time limit be extended when considering the Public Interest test?

The Act acknowledges the care to be applied in assessing the balance of the public interest, and the necessary additional steps to be taken before a proper decision can be taken. As we know, there is a time limit of 20 working days for responding to a request for information. However, the Act permits us to take an additional, though 'reasonable', period of time to reach a final decision in those

cases where an exemption is engaged but is qualified by consideration of the balance of the public interest.

We must, however, tell the applicant within the 20-day period which exemption or exemptions we believe applies to the information requested, and give an estimate of the date by which the public interest decision will have been made and we must stick to this estimate.

What should be ignored when applying the Public Interest test?

The question of where the public interest lies has often been considered by the courts, for example, in newspaper cases particularly where an individual or organisation attempts to prevent publication of a story. In these cases, the courts have often distinguished between matters which are in the public interest from things in which the public are merely interested. This distinction should be borne in mind in applying this test.

Factors that should not be taken into account when assessing the public interest include:

- possible embarrassment of government or other officials
- possible loss of confidence in government or public authority
- seniority of persons involved
- risk of applicant misinterpreting or misunderstanding the information e.g. because it is incomplete
- complexity of the information

Factors in favour of disclosure

As stated earlier, there is a presumption in the Act, and it is the government's intention, that openness in itself is to be regarded as being in the public interest. Why is this so?

The Information Commissioner lists the following public interest factors as encouraging the disclosure of information:

- promoting accountability and transparency for decisions made by the Department. Placing an obligation on officials to provide reasoned explanations for decisions made will improve the quality of decisions and administration
- promoting accountability and transparency in the spending of public money. For example, the public interest is likely to be served in the context of private sector delivery of public services if disclosure of information ensures greater competition and better value for public money. Additionally, disclosure of information as to gifts and expenses may assure the public of the personal probity of elected leaders and officials
- allowing individuals and companies to understand decisions made by public authorities affecting their lives and, in some cases, assisting individuals in challenging those decisions

- furthering the understanding of and participation in the public debate of issues of the day. This factor would come into play if disclosure would allow a more informed debate of issues under consideration by the Government
- bringing to light information affecting public health and safety.

This list is not exhaustive and there may be other factors which should be taken into account depending upon the nature of the request for information.

Remember that public curiosity is not an argument for disclosure: the public interest does not simply mean that which interests the public.

Factors against disclosure of information

The main factors counting against the disclosure of information are those set out in the exemptions themselves. For instance, there is an obvious public interest in

- national defence
- maintaining good international relationships
- law enforcement
- not prejudicing a persons privacy rights

If disclosure would adversely affect any of these matters, it is appropriate to consider the exemptions so that the possible adverse effect of disclosure can be weighed against the positive benefit of openness.

Fees and Charging

Generally speaking, and in accordance with Secretary of State's wishes and previous practice under the Open Government Code of Practice, **DWP will not charge for the provision of information.**

Always consult your Focal Point if you think that charges may be appropriate.

The Act permits an authority to charge a fee for dealing with a request calculated according to Fees Regulations. **However all requests would be free up to a limit of £600** in any case, which is the upper cost limit. The £600 limit equates to 3½ full working days irrespective of the grade of officer involved.

In the extremely unlikely event that DWP would consider a fee, and then only if the allowable charges are over £600, there are only certain things that can and cannot be accounted for in assessing fees. You will note that the limited elements that can be included in assessing a fee make it extremely unlikely that DWP requests could be charged for. In addition to this it is also long-established policy that DWP will not charge for information particularly in respect of personal information or that explaining, for example:

- benefits, grants, rights and entitlements
- the standards and availability of services

- the reasons for administrative decisions made in an applicant's case
- the ways in which the citizen may exercise rights to appeal or complain about a decision
- regulatory requirements affecting affairs of a business, or commercial interests; and
- the main points of existing departmental policies or initiatives

The guidance that follows relates to application of the fees regime and is directed specifically at the Focal Points who must be involved in any case where charging may be considered in exceptional circumstances.

What can be included in assessing fees?

The £600 upper limit costs are limited to those that can reasonably be expected to be calculated in:

- determining whether the requested information is held
- locating the information or the documents containing the information
- retrieving such information or documents and
- extracting* the information from the document containing it (including editing or redacting information)

* The extraction element can include the first time an individual reads information to establish what is contained within a file or document. Any subsequent readings (e.g. to consider exemptions), or if the information is passed to others to read, should not be included in assessing the cost.

What cannot be included in assessing charges?

We may not take into account any costs other than those set out in the Regulations as specified above. In particular **we cannot take account of the following:**

- the time taken to check that a request for information meets the requirements of the Fol Act
- considering whether the information requested should be withheld in reliance on an **exemption** under the Act. This includes any costs incurred through seeking legal advice about whether exemptions apply
- considering whether a request is **vexatious** or a **repeated request**
- obtaining **authorisation** to send out the information
- the time taken to calculate any **fee** to be charged; or
- advice and assistance provided under section 16 of the Act.

What staff cost rates are to be used?

In assessing potential charges all public authorities **must** use the same hourly rate when estimating staff costs, regardless of the actual costs. This hourly rate is set out in Regulations at £25 per person per hour. This equates to 3½ full working days irrespective of the grade of officer involved.

If you feel that complying with the request may exceed £600 it is advisable to go back to the applicant using the relevant parts of Standard letter number 3 (“Seeking clarification”) **after seeking advice from your Focal Point.**

Do we have to charge if costs exceed £600?

We are not required to comply with a request if to do so would mean exceeding the threshold of £600.

If after providing advice and assistance as per Standard Letter number 3, the request is still over the £600 limit, we must inform the applicant that we estimate that the appropriate limit has been exceeded as soon as possible, and certainly no later than the usual time limit for answering requests. There are then three main options:

- decide not to provide the information (there may be circumstances in which other factors have to be taken into account in deciding whether or not to provide the information)
- answer and charge any permitted fee
- **answer without charging.**

The third option is the one which in the vast majority of cases is the preferred one in light of the Department’s documented policy not to charge.

Charging for information

Whilst it may be allowable to charge applicants, any such charges must be fair, reflect reasonable cost and be fully accountable. For example, in most cases, photocopying and printing would be expected to cost no more than 10 pence per sheet of paper.

Before any charge is presented to the applicant, the question of applying the charge should be discussed with your Focal Point or ACI DP/FoI. **No charge should be levied without such discussion.**

In addition to the departmental policy not to charge other than in very exceptional cases, the general position is that charges should not be made for the provision of any information that is necessary for the public to have as part of an understanding of the fair and accountable performance of the Department’s functions.

For example, information explaining:

- benefits, grants, rights and entitlements
- the standards and availability of services

- the reasons for administrative decisions made in an applicant's case
- the ways in which the citizen may exercise rights to appeal or complain about a decision
- regulatory requirements affecting affairs of a business, or commercial interests; and
- the main points of existing departmental policies or initiatives

should usually be available free of charge.

It can be strongly argued that most information held by DWP would fall into the above categories and therefore should not be charged for.

We should certainly not be considering a charge under FoI for information that is currently issued free of charge and should therefore continue to provide information free of charge where this is already the case.

DWP has not sought to waive charges because of its client base. To do so could lead to abuse, by having all requests made through a benefit recipient, for example. **Remember, no charge is ever made for information relating to a person's benefit entitlement or for any information relating to conditions of benefit entitlement more generally.** In making a request for policy or operational information the requester is a citizen rather than a benefit claimant.

No charge will ever be made for the provision of personal information.

However one can be made for complex or time-consuming requests over the threshold of £600 after discussion with your Focal Point or ACI INF.

No charge is made for reviewing a decision not to release information but the review could lead to a charge if the original decision was reversed. Any review must always be conducted with the knowledge and support of your Focal Point and ACI INF.

Aggregating requests for costing purposes (always discuss such cases with your Focal Point.)

In certain situations, the costs of answering more than one request can be added together or aggregated for the purposes of estimating whether the £600 limit would be exceeded in relation to any one of those requests.

This only applies to requests under the Freedom of Information Act, not to subject access requests relating to “unstructured personal data” to which the Data Protection Act applies.

The Regulations state that requests can only be aggregated in the following circumstances:

- two or more requests for information must have been made to the same public authority;
- they must be either from the same person, or from 'different persons who appear to the public authority to be acting in concert or in pursuance of a campaign' (section 12(4)(b) of the FoI Act);
- the requests must relate to the same or similar information; **and**
- they must have been received by the public authority within a space of 60 consecutive working days.

This provision is intended primarily to prevent individuals or organisations circumventing the appropriate limit by splitting a request into smaller parts.

As a matter of good practice, **we should exercise caution** when considering whether requests should be aggregated. There should be strong grounds for believing that requests have been framed precisely in order to circumvent the appropriate limit.

Public authorities should take an overall view of resources which would have to be committed to answering all of the requests, and consider refraining from aggregating if, for example, it would mean that the appropriate limit was exceeded by only a very small amount.

Action if a charge is considered appropriate

If a charge is considered appropriate **and has been agreed with the Focal Point**, send the applicant a detailed estimate **prior to doing the work**. In some instances, it may be advisable to charge in advance or take a deposit but only with the agreement of your Focal Point and ACI INF.

Cross-cutting requests: Who should handle a request that crosses a number of departmental work areas?

It is important to remember that virtually all requests for information continue to be handled as part of everyday business.

Primary responsibility for responding to requests lies with the owner of the information requested.

Multiple requests will need a greater deal of co-ordination and co-operation but this is as much an operational matter as a policy one and should be no different than providing an answer to, for example, a cross-cutting PQ.

For requests received via the external FoI Inbox, ACI INF will allocate them to the Focal Point we consider best placed to respond to the request. However we may occasionally get this wrong and if this is the case it will probably be easier for you to refer it to a more appropriate Focal Point to **handle, copying ACI in to your**

onward referral. However, if you are clear that the request is not for you and you are unsure of where it best sits then please return it to ACI who will consider further.

FoI requests may be for information covering a number of issues that fall within the remits of more than one Focal Point area. Where this is the case we (DWP) should endeavour, where possible and practical, to co-ordinate a single response seeking contributions from other business areas as necessary to inform that reply. Every effort should be made to ensure that the responding Focal Point is able to reply to the request within the statutory time limits.

A sensible way of handling such requests is that the overall response should fall to the Focal Point with responsibility for the bulk of the request, soliciting the assistance of other Focal Points as necessary.

However, in requests where individual elements require significant research or expertise in another Focal Point area it may be more appropriate for the Focal Point/business unit responsible for that issue to reply direct. In such a case, rather than co-ordinate a single reply, the (main) Focal Point, together with ACI INF, may judge that it is more appropriate to ask the Focal Point/business unit responsible for discrete elements to reply direct on that/those particular issue(s). The applicant should be advised that separate replies will be sent and kept informed of progress at all times.

Where a Focal Point has arranged to prepare a co-ordinated reply it should be made clear in the final reply that XXXX is responsible for any issue that does not fall within the direct remit of the replying Focal Point.

Occasionally there may be confusion between Focal Points as to who should handle certain requests e.g. where it is unclear who has the lead policy responsibility. In such cases, ACI INF will act as an honest broker but are not in a position to respond to requests ourselves, excluding of course any requests that may cover our own responsibilities e.g. FoI & DPA policy and confidentiality and disclosure issues.

Requests which are entirely on operational issues relating to, or are clearly appropriate to, Jobcentre Plus, the Pension Service, the Child Support Agency or the Disability and Carers' Service will be delegated to the relevant Agency Focal Point for reply and should be straight-forward as to ownership. It is probably in policy areas that requests may more often cut across other areas and where co-ordinated responses will come into play. If there is any doubt about handling, please contact ACI INF who will assist.

FoI Records/Retention Guidance

There are no specific requirements within FoI in respect of retention periods. However FoI is only as good as the quality of the records to which it provides access. Such rights are of little use if:

- ✦ reliable records are not created in the first place,
- ✦ they cannot be found when needed or
- ✦ the arrangements for their eventual archiving or destruction are inadequate.

Consequently DWP, as other public authorities, are subject to the Public Records Act 1958 and the Public Records Act (NI) 1923 and are also strongly encouraged to pay heed to the guidance in the Lord Chancellor's Code of Practice on the Management of Records which has been issued under section 46 of the Fol Act.

The Departmental Records Office is responsible for all aspects of records policy within the Department for Work and Pensions and their guidance can be found at: [Records Management Guidance](#)

This guidance includes information for staff who create and maintain corporate records covering policy, projects etc i.e. (pink covers – EF491S) registered files.

Not all Fol requests or activities would fall into the criteria for raising a 'pink file' but if they do – for example if the request is particularly sensitive and involves the perusal of policy material - then the guidance produced by DRO should be followed. Registered filing systems exist within most HQ and Agency Central Services areas where work is routinely concerned with public policy or national administration and the need for formal documentation is clear-cut. However this is not necessarily so for 'the field' and straightforward Fol requests may well fall to being filed outwith the registered file system – see below for information on the retention of Fol requests and responses.

Retention of Fol requests and responses: The above guidance still applies. However, we must remember that the applicant has a right to an internal review and the DWP target for handling an internal review is 20 working days.

There is no stipulated timescale within the Fol Act within which it would be reasonable to expect a request for a review to be made. This will have to be assessed on an individual basis taking all factors of the relevant request/reply into account. The Information Commissioner has said that he would normally refuse appeals made more than two months after any Internal Review of the original decision and this is also the time limit that should be applied within DWP. However, where there are extenuating circumstances (e.g. incapacitation of the requester) we should use our discretion when applying this time limit. Therefore it is possible that there may be a considerable time between the applicant receiving our response to an Fol request and his then approaching us to request a review of that decision.

Before the Commissioner will take a case on under his obligations at section 50 of the Act, he must satisfy himself that the applicant has exhausted DWP's review/appeal processes. Once the Commissioner is involved, and with the attendant potential escalation of the review/appeal process, this will dictate somewhat the retention periods e.g. an approach to the Commissioner could in theory also lead to the Information Tribunal/High Court and a possible life span of

the request to year(s) rather than months. It is difficult therefore to come up with a centralised retention period suitable for all requests.

If there is no legal requirement to keep records, any retention period is determined by the 'business need' or in the case of DWP the 'service delivery need' to keep it, this can be determined by things like internal assurance processes and the ability to provide an efficient/effective service. The general principle of the 'DWP Benefits Document and Data Retention Guidance' is that a retention period of 14 months should apply. A reasonable **retention period for Fol papers can be set at a minimum of 9 months** from the last action on the papers but remember that we are applying a business decision here and **not** any Fol requirements. This minimum does not preclude the retention of papers for longer periods if the circumstances warrant or if individual businesses wish to adhere to other (longer) periods set by their own document retention policies.

As usual, do not hesitate to contact Charles or Carol in ACI INF if you have any questions.

Freedom of Information (Fol) Monitoring Requirements

Only certain requests will be formally monitored as Fol requests. These are cases where:

- any information is to be refused, in full or in part
- a fee is being considered
- Focal Points have provided substantive advice or have dealt with the request themselves

When will monitoring reports be due?

Monitoring reports are required for each quarter of the calendar year.

This date allows 30 working days from the end of the quarter for monitoring reports to be submitted to DCA.

The 30 days allows for the 20 working day processing deadline for any request that might be received on the last day of the quarter and, it provides a further 10 working days for the compilation and submission of the report.

The table below indicates reporting dates for the 2007 calendar year.

Monitoring Quarter	Monitoring Period	"Monitoring date" (20 working days after end of	Report Due at MoJ by	Report due at ACI INF (Carol Smith) by:
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		quarter)		(Carol will advise if there are any changes to these dates)
Quarter 1	1 January to 30 March 2007	Tuesday 1 May 2007	Tuesday 15 May 2007	Tuesday 8 May 2007
Quarter 2	1 April to 29 June 2007	Friday 27 July 2007	Friday 10 August 2007	Friday 3 August 2007
Quarter 3	1 July to 28 September 2007	Friday 26 October 2007	Friday 9 November 2007	Friday 2 November 2007
Quarter 4	1 October to 31 December 2007	Tuesday 29 January 2008	Tuesday 12 February 2008	Tuesday 5 February 2008

Publication of FoI statistics

The Department for Constitutional Affairs plan to publish statistics on the operation of the Freedom of Information Act by central government departments and their executive agencies. These will be published on a quarterly basis as follows:

Quarter		Publication date for statistics
Q1	1 January – 31 March	June
Q2	1 April – 30 June	September
Q3	1 July – 30 September	December
Q4	1 October – 31 December	March

DWP statistics will be published on the FoI Internet and Intranet sites.

What will the monitoring report contain?

ACI INF will distribute a standard Excel pro forma setting out the requirements as outlined by DCA.

Each quarterly monitoring Pro forma will collect data for the most recent quarter as follows (some information is collected on a “year to date” basis and will be identified as such):

Timeliness: number of requests processed in full, in part, outstanding and whether it was handled within the 20 day working day limit.

Outcomes: of those processed, the number that were granted or refused either in full or in part as well as cases where advice and assistance were provided to the applicant.

Fees: numbers of cases where fees were requested and received.

Use of exemptions and exceptions: records data on the exemptions or exceptions used to withhold requested information.

Use of certificates (national security): records data on the use of certificates to withhold requested information which falls under the security exemptions.

Internal review: records data on requests that are referred for an internal review during the quarter as required by the monitoring criteria.

Appeals to Information Commissioner: records data on information requests that are appealed to the Information Commissioner.

Appeals to Information Tribunal: records data on information requests that are appealed to the Information Tribunal.

Annual balance sheet for fees: collects brief summary information on fees charged for Fol work during the year. Quarterly fee information is unlikely to be complete as the Act allows respondents up to three months to respond to a fee notice.

In addition to the statistical information above, Charles Cushing in ACI INF may also ask for a supporting narrative report based upon criteria that will be advised.

Focal Point records

Focal Points will need to maintain their own records detailing the considerations taken into account in arriving at a decision to use an exemption.

Interface between Freedom of Information and Data Protection Acts

Section 40 of the Freedom of Information Act sets out what appears, at first sight, to be a complicated exemption from the right to know where the information requested consists of personal data.

Fortunately, the exemption is not as difficult as it first appears. It can be summarised as follows:

if the personal data is about the person requesting the information:

- **there is no right to know** under the Freedom of Information Act - there is, in other words, **an absolute exemption**
- however, any such requests automatically become **subject access requests under the Data Protection Act** and must be treated as such
- this means that despite the exemption under the Freedom of Information Act, **the applicant has a right to his or her information under the Data Protection Act**

if the personal data is about someone other than the applicant:

- there is a **qualified 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 data are about someone who has formally objected to their disclosure.

The term, “third party data” is used to describe personal information about someone other than the applicant.

What is personal data?

“Personal data” is information about a living individual from which that individual can be identified (defined in the Data Protection Act, as amended by the Freedom of Information Act).

Personal data may be in any of the following forms:

- information processed by computer or other equipment (e.g. CCTV)
- information in some sorts of structured manual records
- unstructured personal information held in manual form
- information in medical, social work, local authority housing or school pupil records.

Unstructured personal information

The idea of ‘unstructured personal information’ was introduced into the Data Protection Act by the FoI Act. In effect, this means that **any** information held about living individuals is potentially accessible under the Freedom of Information Act.

However, in the case of unstructured information, **sometimes referred to as 'category e' data**, there are special rules designed to reduce the administrative burden which requests for information are likely to place on authorities. Further information on how to handle such requests can be obtained from Chris Bennett in ACI INF on 020 7712 2418 <mailto:chris.bennett@dwp.gsi.gov.uk>

Subject Access Requests

Subject access requests under the Data Protection Act must be made in writing, including requests made by e-mail.

There is no requirement for the applicant to refer to the Data Protection Act and there will almost certainly be people who request information about themselves (i.e. personal data) mistakenly citing the Freedom of Information Act.

In any event, if the request is for personal data relating to the applicant, it must be treated as a request under the Data Protection Act.

If you believe that you will be unable to respond within the 20 working day period provided by the FoI Act and that you may need the full 40 calendar day period allowed for under the Data Protection Act, you should let the applicant know.

Identity requirements

i) under Freedom of Information

Under the FoI Act, an applicant only needs to state a name, provide an address for correspondence and describe the information requested.

Only in exceptional circumstances will you be justified in seeking to verify the applicant's identity - for instance, if you suspect that a request is a vexatious one or it is submitted under an assumed name.

ii) under Data Protection

Under the Data Protection Act, by contrast, you must avoid making disclosures of personal information which would breach the Act. You should therefore always satisfy yourself that you are providing information to the correct person.

In sensitive cases or where you suspect that the applicant is not who they claim to be, you may therefore need to check signatures or ask for other proof of identity.

Requests for Third Party information i.e. about someone other than the applicant

The Data Protection Act contains 8 principles which, taken together, form the basic standard to which those processing personal data must operate. When an applicant asks for information about someone other than themselves i.e. 'third

party' information, that request can only be refused if disclosure would breach any of the data protection principles.

The first principle requires personal data to be processed fairly and lawfully. **In practice this will be the key issue when considering an application for third party data.**

Disclosure would be unlawful if:

- there would be a breach of confidence. This is likely to arise where relatively sensitive information has been provided in the expectation that it would not be disclosed. Examples could include medical information or personal financial details
- there is a law forbidding disclosure, for instance, the Official Secrets Act.

The concept of “fairness” is harder to define, although in practice it ought not to be difficult to judge whether it would be unfair to someone to pass on their information without their consent.

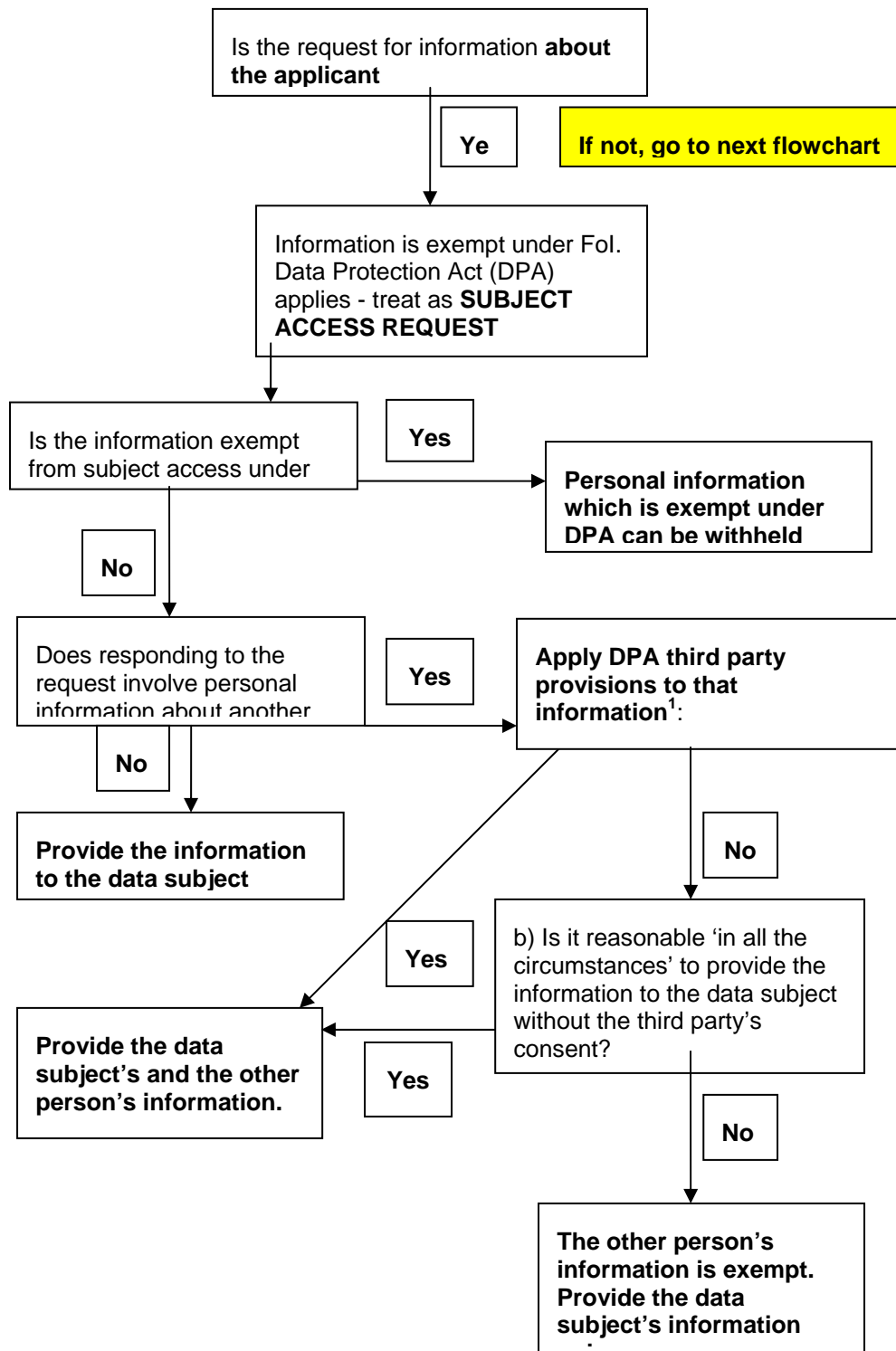
The sorts of questions which should be asked include:

- would the disclosure cause unnecessary or unjustified distress or damage to the person who the information is about?
- would the third party expect that his or her information might be disclosed to others?
- had the person been led to believe that his or her information would be kept secret?
- has the third party expressly refused consent to disclosure of the information?

If you have any doubts as to how to handle a Freedom of Information request for personal information always seek guidance from your Focal Point.

Data Protection and Freedom of Information Interface

Request for personal information about the applicant.

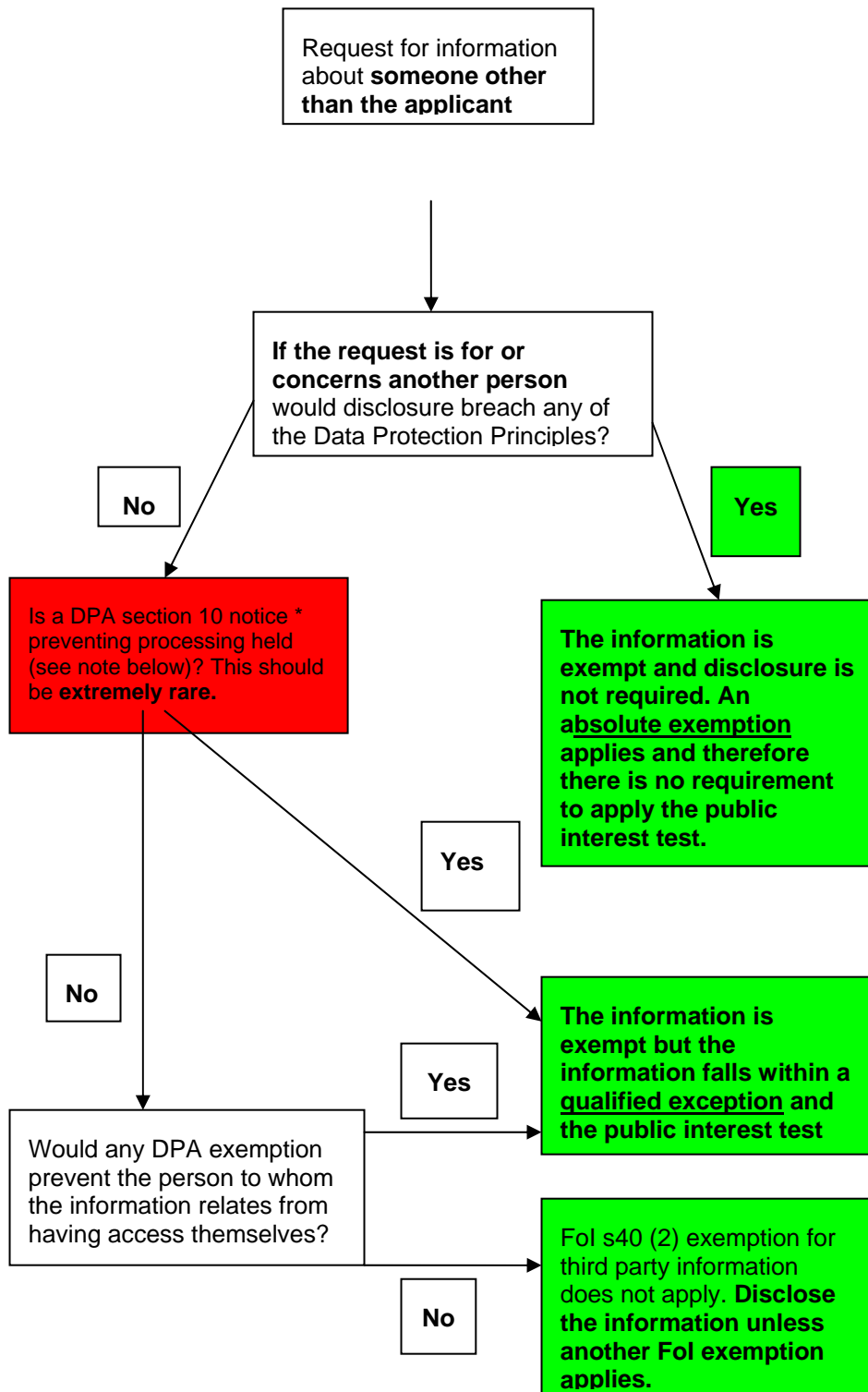


¹ However, where the information does not *identify* the third party or it can be edited out so as not to identify the third party, it should be provided.

If you have any doubts as to how to handle a Freedom of Information request for personal information always seek guidance from your Focal Point.

Data Protection and Freedom of Information Interface

Request for personal information about someone else



* The Data Protection Act gives an individual the right to object in writing to the processing or disclosure of their personal information (known as a section 10 notice).

The green boxes represent the Freedom of Information route in handling personal information requests

If you have any doubts as to how to handle a Freedom of Information request for personal information always seek guidance from your Focal Point.

Freedom of Information: Foundation Pack Part IV

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- [Table of FoI Champions, their deputies and Focal Points](#)
- [The role of FoI Champions, their deputies and Focal Points](#)

FREEDOM OF INFORMATION – DWP CONTACTS

Business Area	Champion	Deputy	Focal Point
Departmental policy responsibility. Advice to Focal Points and other staff	Richard Heaton New Court 48 Carey Street London WC2A 2LS 020 741 21404	Phillip Morgan Room 213 Adelphi 1 – 11 John Adam Street London WC2N 6HT 020 7962 8690 (Martin Dillon 2 nd Floor, Adelphi 020 7962 8633)	Charles Cushing 2 nd Floor, Adelphi 1 – 11 John Adam Street London WC2N 6HT Phone: 020 7962 8581 Fax: 020 7962 8725
Please note that the above officers are responsible for departmental policy on Freedom of Information (FoI). Charles and Martin also provide advice and guidance to the FoI Focal Points on sensitive or contentious cases and where exemptions are being considered. Normally, the first port of call if you have an FoI enquiry should be to your business Focal Point shown below.			
Child Support Agency	Duncan Gilchrist Head of Government and Parliamentary Caxton House Tothill Street London SW1H 9NA	Ronan O'Connor Caxton House Tothill Street London SW1H 9NA 0207 340 4185	Hannah Coupe Caxton House Tothill Street London SW1H 9NA 0207 340 4125
Commercial & Estates Directorate (CED) (Procurement and Commercial)	Sheila Thorpe DWP Commercial Policy and Process Room BP5101, DWP Benton Park View, Newcastle-Upon-Tyne Tyne& Wear. NE98 IYX 0191 2257284		Jeff Anderson DWP Commercial Policy and Process Room BP5101, DWP Benton Park View, Newcastle-Upon-Tyne Tyne& Wear. NE98 IYX 0191 2253156 Deputy Margaret Coull Details as above
Communications Directorate	Sue Garrard 4 th Floor Caxton House Tothill Street	Julia Lewis Room 114, Adelphi 1–11 John Adam Street	Helen Skelton Room 114, Adelphi 020 7712 2863

	London SW1H 9NA	London WC2N 6HT 020 7962 8019	
Cross-cutting Strategy & Analysis Directorate	Sharon Jones The Adelphi 0207 962 8391		Fiona Solomon 4 th floor, The Adelphi 9 – 11 John Adam Street London WC2N 6HT 0207 962 8784
Departmental Records Office	Adrian Towers DRO Building 102, Heywood Stores Heywood, Lancs OL10 2PZ 01253 330202 Fax: 01253 330201	Amanda Ashworth (same address as Champion) 01253 330308	
Disability Carers Service	Kim Archer Room 505, Adelphi 1 – 11 John Adam St London WC2N 6HT 020 7712 8297	Pete Griffiths B120M, North Fylde Central Offices Government Building Warbreck Hill Road Blackpool Lancashire FY2 0UZ 67343	John Puplett Spur L5 Flowers Hill Bristol 0117 971 8228 & Debbie Allan, Block 3, Wales DBC, Gabalfa, Cardiff 029 2058 6453
Group Finance	To be completed	Janet McHenry North Fylde Central Offices Norcross Blackpool FY5 3TA 01253 330594	
Human Resources	Jonathan Russell Head of Health and Safety 1 – 11 John Adam Street London WC2N 6HT	Gerard Blanc Corporate Pay Policy 1S25 Quarry House Leeds LS2 7UA 0113 232 7943	Sarah Jarman DWP Employee Policy Centre of Expertise 1S25 Quarry House Leeds LS2 7UA 0113 2519105

Housing Support Division	David Lewis 5 th Floor Adelphi 1-11 John Adam Street London WC2N 6HT 020 7712 2455		Jason Barrett 5 th Floor, Adelphi 020 7962 8631
Information Directorate	Sharon Jones The Adelphi 0207 962 8391	Nicky Tarry Data Sharing Strategy and Compliance. Data Services Unit Level 2, Kings Court, 80 Hanover Way, Sheffield S3 7UF Tel: 0114 209 8125 Fax: 0114 209 8189	Helen Ganson Statistical Services Benton Park View Longbenton Newcastle Upon Tyne Tyne and Wear NE98 1YX 0191 22 53760
Jobcentre Plus (inc FIS)	Matthew Nicholas Steel City House West Street Sheffield South Yorkshire S1 2GQ	Janet Hinchliff Caxton House Tothill Street London SW1H 9NA 0207 273 6217	Ann Parkin Steel City House West Street Sheffield S1 2GQ 0114 259 7994
Legal and Special Services Group (Solicitors)			Rex Waldron Fiveways House Islington Row Birmingham B15 1SL 0121 626 2795
Pension Client Directorate	Evelyn Arnold 3 rd floor The Adelphi 1 – 11 John Adam street London WC2N 6HT	Sally Andrews SPSL5 Room 2W37 2nd Floor Quarry House Leeds LS2 7UA 0113 2327544	Sheena Beever SPSL5 Room 2W60 2nd Floor Quarry House Leeds LS2 7UA 0113 2327426

<p>Pensions Service</p>	<p>Janet Grossman Trevelyan House 30 Great Peter Street London SW1P 2BY</p>	<p>Graham Mowat No 3 Atlantic Quay York Street Glasgow G2 8LW</p>	<p>Alisdair Pattison Transforming, Operations, Deployment and Support Team (TODST) Executive Support Team Manager No 3 Atlantic Quay York Street Glasgow G2 8LW Tel No 0141 245 6968 Mob No 07962061024</p>
<p>Private Office</p>		<p>Stephen Rippon Business Support Team Caxton House Tothill Street London SW1H 9NA</p>	<p>Richard Cornish Business Support Team Caxton House Tothill Street London SW1H 9NA 0203 267 5050 Also Irene Robertson 0203 267 5051</p>
<p>Programme Systems Directorate (IT etc)</p>	<p>To be completed</p>	<p>To be completed</p>	<p>Richard Kembrey 1st Floor 301 Bridgewater Place Birchwood Park Warrington WA3 6XF 01925 845324</p>
<p>Procurement (Medical Services Contract)</p>	<p>Carol Carter Spur B, Gov't Buildings</p>	<p>Hilary Cresswell Resource & Planning Manager</p>	<p>Anthony Roberts Contracts Management Team</p>

	Cop Lane, Penwortham Preston, PR1 0SZ	Spur B, Gov't Buildings Cop Lane, Penwortham Preston, PR1 0SZ 01772 237702	Spur B, Gov't Buildings Cop Lane, Penwortham Preston, PR1 0SZ 01772 237939 or Simon Holden Contract Management Team (address as above) 01772 237860
The Rent Service	Norman Foster The Rent Service 1 st Floor, 5 Welbeck Street London W1G 9YQ 020 7023 6023 Norman.foster@therentservice.gov.uk	Simon Evelegh The Rent Service 1 st Floor, 5 Welbeck Street London W1G 9YQ 020 7023 6151 Simon.evelegh@therentservice.gov.uk	
Shared Services	Jim Brophy Communications Manager North Fylde Central Offices Norcross Rm 311G Blackpool Lancashire FY5 3TA 01253 333748		
Sustainable Development (for Environmental Information)	Sue Ryan H Wing, Government Buildings Otley Road Lawnswood, Leeds LS16 5PU 0113 230 9701	Mike Halliwell Mayfield Court 56 West Street Sheffield North Yorkshire S1 4EP 0114 259 7753	
Work, Welfare and Equality Group	Sharon White The Adelphi, 2 nd Floor 1 - 11 John Adam Street London WC2N 6HT		Goff Daft Group Finance, Planning Support Division 5 th Floor, Adelphi 020 7712 8436
Working Age Presentation	Garvin Bowen 5 th Floor, Adelphi 020 7712 2416		Goff Daft 5 th Floor, Adelphi 020 7712 8436

The role of Fol Champions, deputies and Focal Points

The role of the Champion is, in effect, to be a figurehead; providing high level visible support for the principles enshrined in the Freedom of Information and Data Protection Acts. It is not anticipated that the Champions will be directly involved themselves with implementation or ongoing operational issues but will delegate this to Deputies and Focal Points as below.

ACI INF is the Department's policy focal point for advice and guidance on compliance with Freedom of Information, Data Protection and Public Records legislation. However, responsibility for actual compliance with these matters lies with the business units owning or holding the relevant information. It is ACI INF's primary objective to work with the businesses to ensure that such compliance is achieved within a framework which takes into account the aims of the department and the business unit.

To achieve this, the deputy Champions will liaise with ACI INF on the direct implementation of the provisions of the Fol Act. The deputy will:

- speak for their business on behalf of the Champion
- lead implementation activity required within individual business units
- lead work required within their own organisation to ensure that correct processes are in place and
- nominate and support a Focal Point

The Focal Points will:

- be responsible for training and awareness raising activity within their business
- have ongoing operational responsibility for Fol
- provide advice and guidance for business unit colleagues on Fol issues
- provide statistical and narrative reports to ACI INF as required
- monitor compliance within the business units and report back to ACI INF as appropriate
- attend meetings of the Focal Point Networking Group.

Annex 1: DCA Guidance

[DCA guidance on Fol exemptions](#)

Annex 2: Suggested answers to “What would you do?” questions

1. Representative of disability rights group asks for the results of surveys of 20 local offices into access & facilities for the disabled.
 - Provide information if not already imminently due for publication.
2. TV company requests details of departmental deliberations on Fol
 - Provide information apart from any information that may be exempt (possibly Formulation of Government Policy – exemption 35)
3. Individual asks for copies of claim forms/statements he has signed
 - Exempt under Fol Act. Provide information as appropriate under Data Protection Act 1998
4. A customer has been marked as PV but is disputing the marking. He has requested sight of internal guidance on PV procedures
 - Provide information
5. Request for all 582 responses to the Pensions Green paper (over 6,000 pages)
 - Refuse request for all 582 responses (voluminous request), but supply a summary of responses, ensuring that any personal information to which a Data Protection exemption applies is withheld e.g. names of individuals. Note: a summary of responses may already have been made publicly available.
6. A man writes in requesting on behalf of his wife that he be sent a copy of any computerised information held about her
 - Personal information. Refuse request but if the husband can provide proof of his wife’s consent a response can be sent to the wife herself.
7. A customer asks for a breakdown of staff numbers & grades within a specified directorate area
 - Provide information
8. Question asked about cost of travel incurred by SoS and how many people travel with him
 - Provide information (unlikely to be covered by any Fol exemption).
9. A TU representative asks personnel for a list of all staff the dept has recommended for honours in the next list.

- Refuse request. Exemption applies (section 37)
10. Journalist asks for a copy of the departmental Personal Information Policy and the CSA Disclosure Guide
- Provide information
11. Rival bidder for a contract wishes to obtain information about the successful bidder including details of new means of processing developed by the successful bidder
- Provide information on the name of the successful bidder, but likely to refuse request for details relating to the new means of processing. Exemption applies- commercial interests.

Annex 3 – Fol Quiz Questions and Answers

1. What does Fol stand for?
 - a) Foreign Office Initiative
 - **b) Freedom of Information**
 - c) Fun on Intercity
2. When do Fol access rights come into force?
 - a) Already have done
 - **b) 1 January 2005**
 - c) 1 November 2005
3. What, if anything, do Fol access rights replace?
 - **a) The Code of Practice on Access to Government Information**
 - b) Environment Information Regulations
 - c) Data Protection Act
4. Which parts of DWP are covered by Fol?
 - a) Only Central Services
 - b) Only DWP and not NDPBs
 - c) Only DWP archive material
 - **d) All parts**
5. The statutory deadline for reply to an Fol request is:
 - **a) 20 working days**
 - b) 40 calendar days
 - c) 14 working days
 - d) within a timescale we consider reasonable.
6. Who can make an Fol request?
 - **a) Anyone of any nationality for any reason**
 - b) UK citizens only
 - c) Only those who have a good reason
 - d) Only MPs, MEPs, and Peers
7. Which, if any, of these requests is not a valid Fol request?
 - **a) A telephone call quoting the Act**

- b) A letter quoting the Act
- c) An e-mail that does not quote the Act
- d) A PQ

8. The two categories for exempting material are called

- a) strong and weak
- b) full and partial
- c) class and case-by case
- **d) absolute and non-absolute**

9. Information can be exempt from disclosure if

- a) Embarrassment will be caused to Ministers
- **b) It relates to personal information**
- c) It is in an unstructured file
- d) It is held at DRO or National Archives

10. Which of the following are absolute exemptions

- a) prejudice to economic interests of the UK
- **b) accessible to applicant by other means**
- c) formulation of government policy
- **d) personal information (in part)**

11. The Public Interest test must be considered

- a) in all cases
- b) where personal information is involved
- **c) if a non-absolute exemption applies**
- d) if an absolute exemption applies

12. Government responsibility for Fol lies with

- a) Home Office
- b) Cabinet Office
- c) Department for Work and Pensions
- **d) Department for Constitutional Affairs**

13. Fol question? Who you gonna call?

Answer: Your Fol Focal point and/or ACI (Inf)