

Freedom of Information: Code of Practice

The Open University supports the objectives of the Freedom of Information Act 2000 (FoIA) and other legislation and guidance relating to the provision of, and access to, information held by the University.

The key aim of the FoIA is to provide legal rights for the public and place legal duties on public authorities in order to transform the culture of public authorities from one of secrecy to one of openness.

The FoIA places two main responsibilities on the University:

- From February 2004 to make non-personal recorded OU information available to the general public by creating and maintaining a publication scheme.
- From January 2005 to respond to individual requests for non-personal recorded information held by the University that is not in the publication scheme.

The FoIA places a legal obligation on the University that affects every member of staff. The Act requires us to make the information we hold (other than personal information) available to the general public, either routinely through the OU publication scheme or ad hoc in response to a request. There are few exemptions and the majority have to take the public interest into account. Decisions by the University to withhold information can be challenged by the public and subject to review by the Information Commissioner, who has the power to order the University to release the information.

This Code of Practice aims to assist OU staff in meeting their statutory obligations under the Freedom of Information Act 2000.

This Freedom of Information Code of Practice took effect from 1st January 2005 and should be read in conjunction with the Data Protection Code of Practice. The University has also produced a Guide to the Freedom of Information Act.

What is freedom of information?

The Freedom of Information Act gives a general right of public access to all types of recorded information held by public authorities (other than personal information), sets out exemptions from that general right and places a number of obligations on public authorities.

The Act applies only to public authorities and not to private entities. Public authorities are broadly defined in the Act, and they include government departments, local authorities and many other public bodies (such as the Post Office, National Gallery and the Parole Board), as well as schools, colleges and universities. This means that the Open University is a public authority and is subject to the Act. Private entities – such as spin off companies – that are wholly owned by a public authority are also subject to the Act, as they are public authorities in their own right. This means that OU Worldwide is a separate public authority and subject to the Act, as are all other companies wholly owned by the OU.

The Act is enforced by the Information Commissioner – who oversees both Freedom of Information and Data Protection legislation. The Act only applies to England, Wales and Northern Ireland and, although Scotland has a separate Freedom of Information Act, the OU in Scotland is subject to the Freedom of Information Act 2000 (the Westminster Act).

The key aims of the Act are:

- To provide legal rights for the public and place legal duties on public authorities
- To transform the culture of Government and public authorities from one of secrecy to one of openness
- To transform the default setting from “this should be kept quiet unless” to “this should be published unless”
- To contribute to public accountability.

Rights of access

Under the Act, any member of the public (including individuals, organisations or businesses) has the right to ask, in writing (by letter, fax or email) to see or receive information held by the University. This can include information which the University has produced, and information which is held on behalf of another organisation. Applicants do not have to state the purpose of their request nor that it is a request under FoIA.

Responsibilities under the Act

The University has two main responsibilities under the Act.

1. Publication scheme

The first is to create and maintain an ‘OU publication scheme’ which is a guide to the information the University has made available as a matter of course. The OU publication scheme can be found at: www.open.ac.uk/foi.

2. Individual requests

The second requirement is to deal with individual requests for other non-personal recorded information i.e. that is not in the OU publication scheme. The Act permits individuals to access all other types of non-personal information that the University holds, subject to specific exemptions in the Act.

- Applicants must make their request in writing (this includes email & fax) but they are not obliged to state that it is a request under FoIA. Applicants who are unable to make a request in writing should be offered assistance to make a request.
- They must supply their name, an address for correspondence or an email address and sufficient information for the information requested to be identified.
- They can send their request to any member of the University.
- They have a right to information recorded both before and after the Act was passed.
- The OU has the right to charge a fee for providing the requested information.

- The information has to be supplied by the preferred method of the applicant (as long as it is reasonable) within 20 working days from receipt of the request and any fee (if applicable).

The Act gives applicants the right to inspect the information, have a copy of the information or a summary of the information. However there are some constraints on what information has to be supplied.

- Information in the 'OU Publication Scheme' is exempt, as is other information that is readily available by other means.
- Information does not have to be generated to satisfy any requests.
- Information that has been disposed of does not have to be supplied, but it is an offence to dispose of information in order to prevent disclosure.

When dealing with requests under the Act the University has a duty to assist and advise the applicant.

The Act states that the public authorities must inform the applicant of the following:

- Whether the requested information is held or not.
- If information is subject to an exemption then that exemption has to be stated.
- The applicant must be informed of the reasons for withholding unless providing the reasoning would effectively mean releasing the exempt information.

Exemptions

The Act creates a general right of access to information held by public bodies, but also sets out 23 exemptions (see appendix 1 for full list) where that right is either not allowed or is qualified. There are two general categories of exemption: those where there is no duty to consider the public interest and those where even though an exemption exists, the University has a duty to consider whether disclosure is required in the public interest. This category of exemption is called a qualified exemption. The public interest test requires the University to determine whether the public interest in withholding the information requested outweighs the public interest in releasing it by considering the circumstances of each particular case and the exemption that covers the information.

Appeals procedure

If it is decided not to disclose the information, the applicant must be informed of the reason. If access to information is refused, the applicant has a right to appeal for a review of the decision.

Applicants appealing against an OU decision must appeal to the OU Freedom of Information Coordinator (first stage). The University Secretary will consider second stage appeals, and applicants will be advised that they can then appeal directly to the Information Commissioner.

In respect of complaints about the level of service, these will be dealt with in the first instance by the Freedom of Information Coordinator, unless the complaint is against the Freedom of

Information Office itself, in which case the matter will be referred to the University Secretary. Further appeal will be to the Information Commissioner.

Timescale and public interest

The University must make information available reactively (by responding to any request made in writing within 20 working days) unless there is an absolute exemption under the Act or a qualified exemption together with a 'public interest' reason for not releasing it.

The University has made information available proactively by including as wide a selection of information as is possible via the Publication Scheme, and by providing information on where publications can be obtained and website links to information available online.

Requests must be answered by providing information, or directing enquirers to where the information can be found (i.e. in the publication scheme or on the website).

The public interest test will apply to qualified exemptions under the Act. The test is whether on balance it is in the public interest to disclose the information.

The Freedom of Information Office will make this decision and keep a record of such requests, the public interest test reasons and the final outcome of each request.

Who in the University is affected by the Act

All University personnel have a responsibility to ensure that the University complies with the legal requirements of the Freedom of Information Act 2000.

The University is committed to continually promoting awareness of the Act and the duties placed on the University as a public authority.

The Open University and its subsidiaries have maintained Publication Schemes and it is recommended that staff familiarise themselves with the types of information they contain so that they can advise and assist the public in finding information.

Requests for recorded information received by staff throughout the University are subject to the Freedom of Information Act (apart from anything that would be classed as 'normal business' such as a request for a prospectus) and must be answered within 20 working days. This means that procedures should be in place to ensure that all incoming post and emails are opened promptly to ensure that any FoI requests are dealt with according to the legal timescale. It is advantageous for all FoI requests to be date stamped upon receipt and an acknowledgement sent.

Dealing with individual requests

The University's Freedom of Information Working Group (FoIWG) has approved the following procedure for dealing with individual requests.

Routine requests

The University receives requests for non-personal recorded information as a matter of course. If the office receiving the request would normally respond by supplying the

information, in order to comply with the FoI Act the information must be dispatched within 20 days of receiving the request.

Requests for information that is not available from or owned by the receiving office should be sent to the Freedom of Information Office to be dealt with.

Requests received by the Freedom of Information Office

Requests received by the FoI office are dealt with by contacting the appropriate department, obtaining the information and sending it out.

Requests for information that may be subject to an exemption

Requests for information identified as potentially subject to an exemption under the Act (and which therefore may not have to be disclosed) must be forwarded to the Freedom of Information Office. The FoI Office assesses the request and may refer it to the University Secretary for a decision. The FoI Office writes a suitable refusal notice for any exempt information.

Advice on exemptions

If advice is required in order to reach a decision on whether or not an exemption applies, the Freedom of Information Office will consult the Office of the Information Commissioner.

If an information owner is not satisfied with the advice given by the Information Commissioner (i.e. that the information must be disclosed) the matter will be referred to the University Secretary for a final decision.

Information which is absolutely or partially exempt

The University will not classify information as exempt unless there are clear reasons under the Act for doing so. Where documents contain exempt information, the rest of the document must be disclosed under the Act unless other exemptions apply.

Where qualified exemptions to access apply, the University must inform the applicant, in writing and within 20 working days, of such an exemption.

The University must apply the public interest test and inform the applicant in writing and as soon as possible, whether the information can be made available in its entirety or in a summarised or edited format.

The University is not obliged to make information available where an absolute exemption applies, and must notify the applicant to this effect within 20 working days.

Details on exemptions are set out in [Appendix 1](#).

Fees and charges

Information contained in or via the OU's Freedom of Information publication scheme website is downloadable free of charge. Charges may be applicable if paper copies are requested (full details of charges are on the Freedom of Information intranet site).

There may be additional charges made under the Freedom of Information Act for work undertaken to obtain and provide the information requested, where information is not included in the publication scheme.

The University must make clear to all applicants when a fee or other charge will be incurred. Applicants have three months to pay a fee or charge before the application is considered to have expired.

Charges will be in accordance with the Fee Regulations issued by the Information Commissioner.

Accessibility

The University undertakes to make information available in other formats if requested where this will increase access, and will provide advice and assistance to any applicant to enable them to access the information they require, insofar as the cost of doing so is defined as reasonable under the Act

Applicants or potential applicants who may have difficulty in making a request in writing should be provided with an appropriate level of assistance according to the Information Commissioner's Guidance.

Compliance with the FoIA 2000

The University recognises the importance of raising awareness of the rights of the public under the Freedom of Information Act and of ensuring that both the public and staff are aware of this Code of Practice.

Failure to comply with legislation and code of practice

The University expects all employees to comply fully with this Code of Practice and principles of the Freedom of Information Act 2000.

If any of the principles of the Freedom of Information Act 2000 are breached, a recommendation or decision may be made by the Information Commissioner or the Information Rights Tribunal to enforce access to information held by the University. (Similarly, the Information Commissioner or Information Rights Tribunal may decide to uphold a decision of the University's following a decision not to disclose information held.)

Codes of practice

The Freedom of Information Act provides for the Lord Chancellor to issue two Codes of Practice.

The Code of Practice issued under section 45 sets out the practices to be followed by authorities when dealing with requests for information.

The Code of Practice issued under section 46 sets out good practice in records management to all authorities subject to the Freedom of Information Act.

Both Codes of Practice can be found on the Ministry of Justice website:

www.justice.gov.uk/guidance/freedom-and-rights/freedom-of-information/code-of-practice.htm

Records management

The University recognises that compliance with the Act requires effective processes for records management. A corporate records management programme is led by the University Records Manager, based in the Library. The programme encompasses the development of guidelines, toolkits, standards and training to help University Units manage their records. For further information please contact: the Records Manager or staff can visit the Information Management website at <http://intranet6.open.ac.uk/library/ir-mgt/>

Relationship between data protection and freedom of information

The individual also has rights under the Data Protection Act 1998. At present an individual's right to privacy outweighs another individual's right to information under the Freedom of Information Act 2000 (i.e. if personal data is contained in a document that document cannot usually be released to a third party). However, public interest exemptions under the Freedom of Information Act 2000 may apply.

If an individual applies for information about themselves there is an absolute exemption under the Freedom of Information Act and the request should be dealt with under the Data Protection right of Subject Access.

Other rights of the individual

This Code of Practice shall not affect or in any way compromise an individual's rights under the Data Protection Act 1998 or the Human Rights Act 1998.

Contacts

Further information and advice can be obtained from:

The Freedom of Information Office
University Secretary's Office
Walton Hall
Milton Keynes

Email: freedom-of-information@open.ac.uk

Telephone 01908 653994

The Information Commissioner is responsible for enforcing the FoIA and can be contacted at:

Information Commissioner
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

www.ico.gov.uk

Telephone: From the UK: 0303 123 1113 or 01625 545745

From overseas: +44 1625 545745

Appendix 1

Absolute and qualified exemptions

The Act creates a general right of access to information held by public bodies, but also sets out 23 exemptions where that right is either not allowed or is qualified. The exemptions relate to issues such as national security, law enforcement, commercial interests, and personal information. In particular, information is exempt from the Act if it is accessible to the applicant by other means, such as from the Funding Councils or BIS. Therefore, information already accessible under an institution's publication scheme need not be provided in response to an individual request, although applicants should be provided with the appropriate website address.

Apart from vexatious or repeated requests, to which an institution need not respond, there are two general categories of exemption: those where, even though an exemption exists, an institution has a duty to consider whether disclosure is required in the public interest, and those where there is no duty to consider the public interest.

The public interest test requires an institution to determine whether the public interest in withholding the exempt information outweighs the public interest in releasing it, by considering the circumstances of each particular case and the exemption that covers the information. The balance will lie in favour of disclosure, because information may only be withheld if the public interest in withholding it is greater than the public interest in releasing it, for example where disclosure of institutional information would harm a police investigation.

In some cases you can apply the exemption separately to whether you confirm that you hold the information and whether you disclose it.

Qualified exemptions (where the public interest test applies)

Exemptions for which the institution has a duty to consider whether disclosure is required in the public interest are listed below. Where an institution considers that the public interest in withholding the information requested outweighs the public interest in releasing it, the institution must inform the applicant of its reasons, unless providing the reasoning would effectively mean releasing the exempt information.

- s22 Information intended for future publication
- s24 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)
- s26 Defence
- s27 International relations
- s28 Relations within the United Kingdom
- s29 The economy
- s30 Investigations and proceedings conducted by public authorities

- s31 Law enforcement
- s33 Audit functions
- s35 Formulation of government policy, and so on
- s36 Prejudice to effective conduct of public affairs (except information held by the House of Commons or the House of Lords)
- s37 Communications with Her Majesty, etc. and honours
- s38 Health and safety
- s39 Environmental information
- s40 Personal information ¹
- s42 Legal professional privilege
- s43 Commercial interests

Absolute exemptions

Absolute exemptions are the exemptions for which it is not necessary to go on to consider disclosure in the public interest.

- s21 Information accessible to applicant by other means even if this involves payment
- s23 Information supplied by, or relating to, bodies dealing with security matters
- s32 Court records, and so on
- s34 It is required for the purpose of avoiding an infringement of the privileges of either House of Parliament
- s36 Prejudice to effective conduct of public affairs ²
- s40 It is personal data the disclosure of which would contrive the Data Protection Act ³
- s41 Information provided in confidence
- s44 Prohibitions on disclosure where a disclosure is prohibited by an enactment or would constitute contempt of court

¹ If the institution believes that disclosure would not breach any of the data protection principles, but the individual who is the subject of the information has properly served notice under s.10 DPA 1998 that disclosure would cause unwarranted substantial damage or distress, or the individual who is the subject of the information would not have a right to know about it or a right of access to it under the DPA 1998, there is no absolute exemption, and the institution should consider the public interest in deciding whether to release the information

² Applies only to information held by House of Commons or House of Lords

³ There is an absolute exemption from the provisions of the FoIA if an applicant making a request for information under the FoIA is the subject of the information requested and they already have the right of 'subject access' under the DPA 1998. There is also an exemption from the provisions of the FoIA if the information requested under the FoIA concerns a third party and disclosure by the institution would breach one of the Data Protection Principles.

Whole category exemptions

These are exemptions where the institution concerned must consider whether particular information falls within a particular category (or class) of information, such as:

- s30 Information relating to investigations and proceedings conducted by public authorities
- s32 Court records
- s35 Formulation of government policy

If information falls into the category described in one of these exemptions, the institution is not required to release it. There is no requirement to consider whether releasing the particular information requested would prejudice a particular activity or interest.

Prejudice test exemptions

These are exemptions where the institution concerned must consider whether disclosure of particular information would, or would be likely to, prejudice:

- s27 The interests of the United Kingdom abroad
- s31 Law enforcement

The information therefore only becomes exempt if disclosing it would, or would be likely to, prejudice either of these factors.

Applying exemptions

An institution wishing to rely upon a specific exemption must therefore ask itself a series of questions:

- Is the information potentially covered by an exemption?
- Does the exemption apply to all or part of the information requested?
- If an exemption does apply, does it require consideration of whether disclosure should be made in the public interest, irrespective of the exemption?
- If an exemption does apply, does it require consideration of whether disclosure would be prejudicial to a particular activity or interest?

Institutions are advised to read the exemptions with care when determining whether they can be relied on. Only the information to which an exemption applies can be withheld. For example, if a requested document contains some exempt information, only those specific pieces of exempt information can be withheld and the rest of the document has to be released.

Where an institution decides an exemption applies and withholds information, it must give reasons for its decision and inform the applicant of his or her right to complain to the Information Commissioner. Where an exemption applies, but an institution is nevertheless required to release the information by the Information Commissioner, because it is in the public interest to do so, it must disclose the information requested 'within a reasonable time'.

Guidance as to how exemptions might apply in particular circumstances will be developed by the office of the Information Commissioner in time and in the light of case by case experience.

Information protected by absolute exemptions is not made available to applicants, and the University is not obliged to confirm or deny that such information is held.

For qualified exemptions the University must confirm or deny that such information exists, even if a public interest test exempts such information, unless the statement of confirmation/denial would itself disclose exempt information.

There are two other general exemptions:

1. The legislation makes provision for vexatious or repeated requests, to which the University is not obliged to respond.
2. If the costs of retrieval, photocopying and postage involved in supplying the requested information come to more than £450 then the request does not have to be satisfied.