

About the guide	2
Introduction	3
What makes a valid request?	4
How to know what's being requested	7
Timescales	9
Charging a fee and cost limits	11
Finding and preparing the information	15
FOI and other laws	18
Responding to a request	21
Refusal notice	24
Vexatious and repeated requests	26
Exemptions	29
List of exemptions	34
Prejudice test	45
Public interest test	46
Complaints (internal reviews)	48

# About the guide

This content is new. [Please let us know your thoughts.](#)

## About the Guide to managing an FOI request

This guide is for those who work for a public authority and have day-to-day responsibility **for responding to** freedom of information.

It explains how to apply the Act by giving practical examples and answering frequently asked questions.

## Further reading

 [View a full index of our Freedom of Information and Environmental Information Regulations guidance](#)  
For organisations

# Introduction

Anyone has a right to request information from a public authority. You have two separate duties when responding to these requests:


- to tell the applicant whether you hold any information falling within the scope of their request; and
- to provide that information

You normally have 20 working days to respond to a request.

For a request to be valid under the Freedom of Information Act it must be in writing, but requesters do not have to mention the Act or direct their request to a designated member of staff. It is good practice to provide the contact details of your freedom of information officer or team, if you have one, but you cannot ignore or refuse a request simply because it is addressed to a different member of staff. Any letter or email to a public authority asking for information is a request for recorded information under the Act.

This doesn't mean you have to treat every enquiry formally as a request under the Act. It will often be most sensible and provide better customer service to deal with it as a normal customer enquiry under your usual customer service procedures, for example, if a member of the public wants to know what date their rubbish will be collected, or whether a school has a space for their child. The provisions of the Act need to come into force only if:

- you cannot provide the requested information straight away; or
- the requester makes it clear they expect a response under the Act.

This [request handling flowchart](#)  provides an overview of the steps to follow when handling a request for information.

# What makes a valid request?

## At a glance

To be valid under the Act, the request must:

- be in writing. This could be a letter or email. Requests can also be made via the web, or even on social networking sites such as Facebook or Twitter if your public authority uses these;
- include the requester's real name. The Act treats all requesters alike, so you should not normally seek to verify the requester's identity. However, you may decide to check their identity if it is clear they are using a pseudonym or if there are legitimate grounds for refusing their request and you suspect they are trying to avoid this happening, for example because their request is vexatious or repeated. Remember that a request can be made in the name of an organisation, or by one person on behalf of another, such as a solicitor on behalf of a client;
- include an address for correspondence. This need not be the person's residential or work address – it can be any address at which you can write to them, including a postal address or email address;
- describe the information requested. Any genuine attempt to describe the information will be enough to trigger the Act, even if the description is unclear, or you think it is too broad or unreasonable in some way. The Act covers information not documents, so a requester does not have to ask for a specific document (although they may do so). They can, for example, ask about a specific topic and expect you to gather the relevant information to answer their enquiry. Or they might describe other features of the information (eg author, date or type of document).

This is not a hard test to satisfy. Almost anything in writing which asks for information will count as a request under the Act. People may also send you requests through websites like [WhatDoTheyKnow](#), which will automatically publish your response online. These are still valid requests. The Act contains other provisions to deal with requests which are too broad, unclear or unreasonable.

Even if a request is not valid under the Freedom of Information Act, this does not necessarily mean you can ignore it. Requests for 'environmental information', for example, can be made verbally. You also have an obligation to provide advice and assistance to requesters. Where somebody seems to be requesting information but has failed to make a valid freedom of information request, you should draw their attention to their rights under the Act and tell them how to make a valid request.

For further information, read our more detailed guidance:

## Further Reading

 [Recognising a request made under the Freedom of Information Act \(section 8\)](#)   
For organisations

## In brief

- [When should we deal with a request as an FOI request?](#)
- [Can a question be a valid request?](#)

- [Should Parliamentary Questions be treated as FOI requests?](#)

## When should we deal with a request as a freedom of information request?

You can deal with many requests by providing the requested information in the normal course of business. If the information is included in the publication scheme, you should give this out automatically, or provide a link to where the information can be accessed (see [What information do we need to publish?](#)).

If you need to deal with a request more formally, it is important to identify the relevant legislation:

- If the person is asking for their own personal data, you should deal with it as a data protection subject access request.
- If the person is asking for 'environmental information', the request is covered by the Environmental Information Regulations 2004.

Any other non-routine request for information you hold should be dealt with under the Freedom of Information Act.

## Can a question be a valid request?

Yes, a question can be a valid request for information. It is important to be aware of this so that you can identify requests and send them promptly to the correct person.

### **Example:**

"Please send me all the information you have about the application for a 24-hour licence at the Midnite Bar."

"Re. Midnite Bar licence application. Please explain, why have you decided to approve this application?"

Both are valid requests for information about the reasons for the decision.

Under the Act, if you have information in your records that answers the question you should provide it in response to the request. You are not required to answer a question if you do not already have the relevant information in recorded form.

In practice this can be a difficult area for public authorities. Many of those who ask questions just want a simple answer, not all the recorded information you hold. It can be frustrating for applicants to receive a formal response under the Act stating that you hold no recorded information, when this doesn't answer their simple question. However, requesters do have a right to all the relevant recorded information you hold, and some may be equally frustrated if you take a less formal approach and fail to provide recorded information.

The best way round this is usually to speak to the applicant, explain to them how the Act works, and find

out what they want. You should also remember that even though the Act requires you to provide recorded information, this doesn't prevent you providing answers or explanations as well, as a matter of normal customer service.

The Information Commissioner's Office (ICO) recognises that some public authorities may initially respond to questions informally, but we will expect you to consider your obligations under the Act as soon as it becomes clear that the applicant is dissatisfied with this approach. Ultimately, if there is a complaint to the ICO, the Commissioner will make their decision based on whether recorded information is held and has been provided.

## Should Parliamentary Questions be treated as FOI requests?

Parliamentary Questions (PQs) are part of parliamentary proceedings and must not be treated as requests for information under FOIA (or under the EIR); to do so would infringe parliamentary privilege.

## Further Reading

 [The ICO's guidance on parliamentary privilege \(section 34\) !\[\]\(80ae2b64037a63e4dd106d2cfb4205ab\_img.jpg\)](#)

For organisations  
PDF (275.23K)

Councils may permit members of the public to raise questions, either orally or in writing, at council meetings. These questions also should not be treated as requests for information under FOIA or under the EIR.

# How to know what's being requested

## At a glance

First, read the request carefully and make sure you know what is being asked for. You must not simply give the requester information you think may be helpful; you must consider all the information that falls within the scope of the request, so identify this first. Always consider contacting the applicant to check that you have understood their request correctly.

You should read a request objectively. Do not get diverted by the tone of the language the requester has used, your previous experience of them (unless they explicitly refer you to this) or what you think they would be most interested in.

### **Example:**

"Approving the 24-hour licence at the Midnite Bar – can you provide me the details of this completely ridiculous licence application?"

This may still be a valid request, in spite of the language.

## What if we are unsure what's being asked for?

Requests are often ambiguous, with many potential interpretations, or no clear meaning at all. If you can't answer the request because you are not sure what is being requested, you must contact the requester as soon as possible for clarification.

You do not have to deal with the request until you have received whatever clarification you reasonably need. However, you must consider whether you can give the requester advice and assistance to enable them to clarify or rephrase their request. For example, you could explain what options may be available to them and ask whether any of these would adequately answer their request.

### **Example:**

"You have asked for all expenses claims submitted by Mrs Jones and dates of all meetings attended by Mrs Jones in June, July or August last year.

This could mean:

- A) all expenses claims Mrs Jones ever submitted, plus dates of meetings she attended in June, July and August; or
- B) all expenses claims Mrs Jones submitted in June, July or August, and dates of meetings she

attended in the same months.

Please let us know which you mean.”

**Example:**

“You have asked for a copy of our risk assessment policy. We do not have a specific policy relating to risk assessment. However, the following policies include an element of risk assessment:

- \* Health and Safety at Work policy
- \* Corporate Risk Strategy
- \* Security Manual

Please let us know whether you would be interested in any of these documents or what risk assessment information you are interested in seeing.”

The time for compliance will not begin until you have received the necessary clarification to allow you to answer the request.

For further information, read our more detailed guidance;

## Further Reading

 [Interpreting and clarifying requests](#)

For organisations



# Timescales

## At a glance

You normally have 20 working days to respond to a request.

## In brief

- [What are the timescales for responding to a request for information?](#)
- [It will take us a long time to find the information. Can we have extra time?](#)
- [Can we have extra time to consider exemptions?](#)

## What are the timescales for responding to a request for information?

Your main obligation under the Act is to respond to requests promptly, with a time limit acting as the longest time you can take. Under the Act, most public authorities may take up to 20 working days to respond, counting the first working day after the request is received as the first day. For schools, the standard time limit is 20 school days, or 60 working days if this is shorter.

Working day means any day other than a Saturday, Sunday, or public holidays and bank holidays; this may or may not be the same as the days you are open for business or staff are in work.

The time allowed for complying with a request starts when your organisation receives it, not when it reaches the freedom of information officer or other relevant member of staff.

Certain circumstances (explained in this guidance and in [When can we refuse a request?](#)) may allow you extra time. However, in all cases you must give the requester a written response within the standard time limit for compliance.

For further information, read our more detailed guidance:

## Further Reading

 [Time limits for compliance under the Freedom of Information Act \(Section 10\)](#)   
For organisations

## It will take us a long time to find the information. Can we have extra time?

The Act does not allow extra time for searching for information. However, if finding the information and drawing it together to answer the request would be an unreasonable burden on your resources and exceed a set costs limit, you may be able to refuse the request. Likewise, you may not have to confirm whether or not you hold the information, if it would exceed the costs limit to determine this.

See [When can we refuse a request?](#) for more details.

## Can we have extra time to consider exemptions?

No, but if the exemption is qualified you can have extra time to consider the public interest test. In doing so you must: identify the relevant exemption(s) before you can claim any extra time for the public interest test; and write and let the requester know why you are claiming extra time.

# Charging a fee and cost limits

## At a glance

The Act does not allow you to charge a flat fee but you can recover your communication costs, such as for photocopying, printing and postage. You cannot normally charge for any other costs, such as for staff time spent searching for information, unless other relevant legislation authorises this.

However, if the cost of complying with the request would exceed the cost limit referred to in the legislation, you can offer to supply the information and recover your full costs (including staff time), rather than refusing the request. You can find more detail about the cost limit in [When can we refuse a request?](#).

If you wish to charge a fee, you should send the requester a fees notice. You do not have to send the information until you have received the fee. The time limit for complying with the request excludes the time spent waiting for the fee to be paid. In other words, you should issue the fees notice within the standard time for compliance. Once you have received the fee, you should send out the information within the time remaining.

If the information that you are providing is a dataset, and it is covered by the RPSI, then you may charge for permitting re-use according to RPSI. If it is not covered, for example because you are not a public sector body under RPSI, then you should deal with charging for re-use according to the dataset provisions in the Act. There is no re-use fee if you are making the datasets available for re-use under [the Open Government Licence](#).

For further information, read our more detailed guidance:

## Further Reading

### [Datasets](#)

For organisations  
PDF (350.51K)

### [Guide to RPSI](#)

For organisations

## In brief

- [When can we refuse a request on the grounds of cost?](#)
- [How do we work out whether the cost limit would be exceeded?](#)
- [What if we think complying with the request would exceed the cost limit?](#)
- [Can we charge extra if complying with a request exceeds the cost limit](#)

## When can we refuse a request on the grounds of cost?

The Act recognises that freedom of information requests are not the only demand on the resources of a public authority. They should not be allowed to cause a drain on your time, energy and finances to the extent that they negatively affect your normal public functions.

Currently, the cost limit for complying with a request or a linked series of requests from the same person or group is set at £600 for central government, Parliament and the armed forces and £450 for all other public authorities. You can refuse a request if you estimate that the cost of compliance would exceed this limit. This provision is found at section 12 of the Act.

You can refuse a request if deciding whether you hold the information would mean you exceed the cost limit, for example, because it would require an extensive search in a number of locations. Otherwise, you should say whether you hold the information, even if you cannot provide the information itself under the cost ceiling.

When calculating the costs of complying, you can aggregate (total) the costs of all related requests you receive within 60 working days from the same person or from people who seem to be working together.

## How do we work out whether the cost limit would be exceeded?

You are only required to estimate whether the limit would be exceeded. You do not have to do the work covered by the estimate before deciding to refuse the request. However, the estimate must be reasonable and must follow the rules in the [Freedom of Information \(Appropriate Limit and Fees\) Regulations 2004](#).

When estimating the cost of compliance, you can only take into account the cost of the following activities:

- determining whether you hold the information;
- finding the requested information, or records containing the information;
- retrieving the information or records; and
- extracting the requested information from records.

The biggest cost is likely to be staff time. You should rate staff time at £25 per person per hour, regardless of who does the work, including external contractors. This means a limit of 18 or 24 staff hours, depending on whether the £450 or £600 limit applies to your public authority.

You cannot take into account the time you are likely to need to decide whether exemptions apply, to redact (edit out) exempt information, or to carry out the public interest test.

However, if the cost and resources required to review and remove any exempt information are likely to be so great as to place the organisation under a grossly oppressive burden then you may be able to consider the request under Section 14 instead. (vexatious requests).

Please see '[Dealing with vexatious requests](#)' for further details about refusing requests which impose a grossly oppressive burden.

Note that although fees and the appropriate limit are both laid down in the same Regulations, the two things must not be confused:

- The cost of compliance and the appropriate limit relate to when a request can be refused.
- The fees are what you can charge when information is disclosed.

See [What should we do when we receive a request?](#) for the rules on charging a fee.

For further information, read our more detailed guidance:

## Further Reading

[Requests where the cost of compliance exceeds the appropriate limit](#)

External link

[Calculating costs where a request spans different access regimes](#)

External link

## What if we think complying with the request would exceed the cost limit?

If you wish to use section 12 (cost limit) of the Act as grounds for refusing the request, you should send the requester a written refusal notice. This should state that complying with their request would exceed the appropriate cost limit. However, you should still say whether you hold the information, unless finding this out would in itself incur costs over the limit.

There is no official requirement for you to include an estimate of the costs in the refusal notice. However, you must give the requester reasonable advice and assistance to refine (change or narrow) their request. This will generally involve explaining why the limit would be exceeded and what information, if any, may be available within the limits.

### Example

"You have asked for all the details of expenses claims made for food or drink between 1995 and 2010.

No forms have been kept for the period before 1999. Between 1999 and 2006, these forms were submitted manually and are not stored separately or sorted by type of expenditure but are filed in date order along with other invoices and bills. We estimate that we have at least 10,000 items in these boxes, and we would have to look at every page to identify the relevant information. Even at 10 seconds an item, this would amount to more than 27 hours of work.

However, records since 2007 are kept electronically and we could provide these to you."

You should not:

- give the requester part of the information requested, without giving them the chance to say which part they would prefer to receive;
- fail to let the requester know why you think you cannot provide the information within the cost limit;
- advise the requester on the wording of a narrower request but then refuse that request on the same basis; or
- tell the requester to narrow down their request without explaining what parts of their request take your costs over the limit. A more specific request may sometimes take just as long to answer. For instance, in

the example above, if the requester had later asked only for expenses claims relating to hotel room service, this would also have meant searching all the records.

If the requester refines their request appropriately, you should then deal with this as a new request. The time for you to comply with the new request should start on the working day after the date you receive it.

If the requester does not want to refine their request, but instead asks you to search for information up to the costs limit, you can do this if you wish, but the Act does not require you to do so.

## Can we charge extra if complying with a request exceeds the cost limit

Yes, if complying with a request would cost you more than the £450 or £600 limit, you can refuse it outright or do the work for an extra charge.

If you choose to comply with a request costing over £450 or £600, you can charge:

- the cost of compliance (the costs allowed in calculating whether the appropriate limit is exceeded); plus
- the communication costs (see [What should we do when we receive a request?](#)); plus
- £25 an hour for staff time taken for printing, copying or sending the information.

You should not do this work without getting written agreement from the requester that they will pay the extra costs. You should also give the requester the option of refining their request rather than paying extra. The 'time for compliance' clock is paused in these circumstances, until you receive payment.

For further information, read our more detailed guidance:

# Finding and preparing the information

## At a glance

The Act only applies to recorded information, but you need to conduct thorough searches of the information you do hold to make sure you find everything covered by the request.

Even if the information is inaccurate or incomplete it should be provided, unless an exemption applies.

You should provide the information you hold at the time the request is made. You can only alter it if such amendments would've been made regardless of the request. Altering or deleting information to avoid releasing it in response to a request is a criminal offence.

When deciding what information can be disclosed you should double check whether there is any hidden information or meta data within it, particularly personal data.



## In brief

- [What happens if we don't have the information?](#)
- [What if the information is inaccurate?](#)
- [Can we change or delete information that has been requested?](#)
- [Is there anything else we should consider before sending the information?](#)

## What happens if we don't have the information?

The Act only covers recorded information you hold. When compiling a response to a request for information, you may have to draw from multiple sources of information you hold, but you don't have to make up an answer or find out information from elsewhere if you don't already have the relevant information in recorded form.

Before you decide that you don't hold any recorded information, you should make sure that you have carried out adequate and properly directed searches, and that you have convincing reasons for concluding that no recorded information is held. If an applicant complains to the ICO that you haven't identified all the information you hold, we will consider the scope, quality and thoroughness of your searches and test the strength of your reasoning and conclusions.

If you don't have the information the requester has asked for, you can comply with the request by telling them this, in writing. If you know that the information is held by another public authority, you could transfer the request to them or advise the requester to redirect their request. Part 2 of the [section 45 code of practice](#)  provides advice on good practice  in transferring requests for information.

For further information, read our more detailed guidance:

## Further Reading

## What if the information we hold is inaccurate?

The Act covers recorded information, whether or not it is accurate. You cannot refuse a request for information simply because you know the information is out of date, incomplete or inaccurate. To avoid misleading the requester, you should normally be able to explain to them the nature of the information, or provide extra information to help put the information into context.

When considering complaints against a public authority, the ICO will normally reject arguments that inaccurate information should not be disclosed. However, in a few cases there may be strong and persuasive arguments for refusing a request on these grounds if these are specifically tied to an exemption in the Act. It will be up to you to identify such arguments.

## Can we change or delete information that has been requested?

No. You should normally disclose the information you held at the time of the request. You are allowed to make routine changes to the information while you are dealing with the request as long as these would have been made regardless of the request. However, it would not be good practice to go ahead with a scheduled deletion of information if you know it has been requested.

You must not make any changes or deletions as a result of the request, for example, because you are concerned that some of the information could be embarrassing if it were released. This is a criminal offence (see [What happens when someone complains?](#)).

For further information, read our more detailed guidance:

## Further Reading

## Is there anything else we should consider before sending the information?

You should double check that you have included the correct documents, and that the information you are releasing does not contain unnoticed personal data or other sensitive details which you did not intend to disclose.

This might be a particular issue if you are releasing an electronic document. Electronic documents often contain extra hidden information or 'metadata' in addition to the visible text of the document. For example, metadata might include the name of the author, or details of earlier draft versions. In particular, a spreadsheet displaying information as a table will often also contain the original detailed source data, even



if this is not immediately visible at first glance.

You should ensure that staff responsible for answering requests understand how to use common software formats, and how to strip out any sensitive metadata or source data (eg data hidden behind pivot tables in spreadsheets).

See the [National Archives Redaction Toolkit](#) for further information, or read our more detailed guidance:

# FOI and other laws

## At a glance

A request for the applicant's own personal data should be dealt with as a subject access request under provisions the Data Protection Act 2018. Personal data about other people should only be disclosed if doing so wouldn't infringe the UK General Data Protection Regulation.

Following disclosure, Copyright and intellectual property can still be enforced. The Re-use of Public Sector Information Regulations are relevant where the applicant wishes to reuse the information for a commercial purpose.

There are exemptions which apply when a statutory prohibition prevents the disclosure of information and which protect information provided in confidence. There's also an exemption where access is provided under other legislation.

## In brief

- [How does the Freedom of Information Act affect data protection?](#)
- [How does the Freedom of Information Act affect copyright and intellectual property?](#)
- [What other laws may we need to take into account when applying the Freedom of Information Act?](#)

## How does the Freedom of Information Act affect data protection?

The UK General Data Protection Regulation (the UK GDPR) and the Data Protection Act 2018 (the DPA 2018) give rules for handling information about people. They include the right for people to access their personal data. The Freedom of Information Act and the DPA 2018 come under the heading of information rights and are regulated by the ICO.

When a person makes a request for their own information, this is a data protection subject access request. However, members of the public often wrongly think it is the Freedom of Information Act that gives them the right to their personal information, so you may need to clarify things when responding to such a request.

The UK GDPR and the DPA 2018 exist to protect people's right to privacy, whereas the Freedom of Information Act is about getting rid of unnecessary secrecy. These two aims are not necessarily incompatible but there can be a tension between them, and applying them sometimes requires careful judgement.

When someone makes a request for information that includes someone else's personal data, you will need to carefully balance the case for transparency and openness under the Freedom of Information Act against the data subject's right to privacy under the data protection legislation. You will need to decide whether you can release the information without infringing the UK GDPR data protection principles.

See [When can we refuse a request?](#) for more information on the exemptions for personal data.

## How does the Freedom of Information Act affect copyright and intellectual property?

The Act does not affect copyright and intellectual property rights that give owners the right to protect their original work against commercial exploitation by others. If someone wishes to re-use public sector information for commercial purposes, they should make an application under the Re-use of Public Sector Information Regulations. See the [What is PSI? section of the National Archives website](#) for more information on this. The ICO does not have any powers to regulate copyright or the re-use of information.

When giving access to information under the Act, you cannot place any conditions or restrictions on that access. For example, you cannot require the requester to sign any agreement before they are given access to the information. However, you can include a copyright notice with the information you disclose. You can also make a claim in the courts if the requester or someone else uses the information in breach of copyright. The ICO encourages public authorities to use [the Open Government Licence](#) provided by the National Archives.

In most cases re-use of information released under the Act is dealt with under RPSI. RPSI applies to most but not all public authorities; for example, universities in general are not covered by RPSI although their libraries are. For public authorities that are not subject to RPSI, there are some re-use provisions in the Act but they only apply to one type of information, namely datasets. Under these provisions, if you are releasing a dataset that is a 'relevant copyright work' and you are the only owner of the copyright or database rights, then you must release it under a licence that permits re-use. The licences to use for this are specified in the section 45 code of practice on datasets. If the dataset can be re-used without charge, then the appropriate licence will usually be [the Open Government Licence](#).

For further information, read our more detailed guidance:

### Further Reading

 [Guide to RPSI](#)  
For organisations

## What other laws may we need to take into account when applying the Freedom of Information Act?

The Freedom of Information Act may work alongside other laws.

Some of the exemptions in the Act that allow public authorities to withhold information use principles from common law, for example the section 41 exemption refers to the law of confidence.

Also, section 44 of the Act allows information to be withheld when its disclosure is prohibited under other legislation, and section 21 can exempt information that is accessible to an applicant using procedures in other legislation. See [When can we refuse a request?](#) for more information on the exemptions.

When dealing with requests for information, you should continue to be aware of your obligations under the Equality Act 2010 (or Disability Discrimination Act 1995 in Northern Ireland). These Acts are not regulated by the ICO so they are not covered in this guidance.

You should handle requests for environmental information under the Environmental Information Regulations 2004. The Regulations also require you to make environmental information available proactively by readily accessible electronic means. If you are likely to be handling requests for information, you will need to familiarise yourself with the basics of the Regulations, especially the definition of 'environmental information', found in regulation 2(1).

If you are a public sector body as defined by RPSI then most of the information you hold as part of your public task must be made available for re-use on request. Most, but not all public authorities are public sector bodies under RPSI. Libraries, museums and archives are covered but they have discretion as to whether to permit re-use. RPSI applies to information in which you, as the public sector body, hold the intellectual property rights but does not generally apply to information that is exempt from disclosure under the Act or under the Environmental Information Regulations.

The Infrastructure for Spatial Information in the European Community Regulations 2009 came into force on 31 December 2009. You will need to take these into account when considering your duty under the Freedom of Information Act to proactively publish information, as they require public authorities to make 'spatial data sets' (sets of data linked to geographical locations) publicly available in a consistent and usable electronic format.

For further information, read our more detailed guidance:

## Further Reading

 [What is environmental information?](#)

For organisations

 [Guide to RPSI](#)

For organisations

# Responding to a request

## At a glance

You have two separate duties when responding to these requests:

- to tell the applicant whether you hold any information falling within the scope of their request; and
- to provide that information

You normally have 20 working days to respond to a request.

However, this does not mean you are always obliged to provide the information. In some cases, there will be a good reason why you should not make public some or all of the information requested.

You can refuse an entire request under the following circumstances:

- It would cost too much or take too much staff time to deal with the request.
- The request is vexatious.
- The request repeats a previous request from the same person.

In addition, the Freedom of Information Act contains a number of exemptions that allow you to withhold information from a requester. In some cases it will allow you to refuse to confirm or deny whether you hold information.

If you are refusing all or any part of a request, you must send the requester a written refusal notice. You will need to issue a refusal notice if you are either refusing to say whether you hold information at all, or confirming that information is held but refusing to release it.

## In brief

- [Do we have to release the information?](#)
- [Do we have to tell them what information we have?](#)
- [In what format should we give the requester the information?](#)
- [Does the Freedom of Information Act allow us to disclose information to a specific person or group alone?](#)
- [Is there anything else we should consider before sending the information?](#)

## Do we have to release the information?

Yes, under the law you must release the information unless there is good reason not to. For more about when you may be able to refuse the request, or withhold some or all of the information, see [When can we refuse a request?](#)

## Do we have to tell them what information we have?

Yes, unless one of the reasons for refusing to do this applies – see [When can we refuse a request?](#) for details.

You have two duties when responding to requests for information: to let the requester know whether you hold the information, and to provide the information. If you are giving out all the information you hold, this will fulfil both these duties. If you are refusing all or part of the request, you will normally still have to confirm whether you hold (further) information. You do not need to give a description of this information; you only have to say whether you have any (further) information that falls within the scope of the request.

In some circumstances, you can refuse to confirm or deny whether you hold any information. For example, if a requester asks you about evidence of criminal activity by a named individual, saying whether you hold such information could be unfair to the individual and could prejudice any police investigation. We call this a 'neither confirm nor deny' (NCND) response.

For further information, read our more detailed guidance:

## In what format should we give the requester the information?

There are a number of ways you could make information available, including by email, as a printed copy, on a disk, or by arranging for the requester to view the information. Normally, you should send the information by whatever means is most reasonable. For example, if the requester has made their request by email, and the information is an electronic document in a standard form, then it would be reasonable for you to reply by email and attach the information.

However, requesters have the right to specify their preferred means of communication, in their initial request. So you should check the original request for any preferences before sending out the information.

You may also want to consider whether you would like to include anything else with the information, such as a copyright notice for third party information, or explanation and background context.

Remember that disclosures under the Act are 'to the world', so anyone may see the information.

If the information that you are making available is a dataset, and the requester has expressed a preference for an electronic copy, then, so far as reasonably practicable, you must provide the dataset in a re-usable form.

If your authority is also a public sector body under the Re-use of Public Sector Information Regulations 2015 (RPSI) then you should deal with licensing re-use under the terms of RPSI. If RPSI does not apply you should license re-use according to the dataset provisions in the Act. These say that if the dataset is a 'relevant copyright work' and you are the only owner of the copyright or database rights, then you must make it available under a licence that permits re-use. The licences to use for this are specified in the section 45 code of practice on datasets. If the dataset can be re-used without charge, then the appropriate licence will usually be [the Open Government Licence](#).

For further information, read our more detailed guidance:

## Further Reading

 [Datasets](#) 

For organisations  
PDF (350.51K)

 [Means of communicating information \(section 11\)](#)

For organisations

 [Guide to RPSI](#)

For organisations

## Does the Freedom of Information Act allow us to disclose information to a specific person or group alone?

Disclosures under the Act are 'to the world'. However, you can restrict the release of information to a specific individual or group at your discretion, outside the provisions of the Act.

If you make a restricted disclosure, you should make it very clear to the requester that the information is for them alone; many requesters are satisfied with this.

However, if the requester has made it clear that they want the information under the Act and are not satisfied with receiving it on a discretionary basis, you can give them the information, but you may also need to give them a formal refusal notice, explaining why you have not released it under the Act. See [When can we refuse a request?](#) for more details about refusal notices.

## Is there anything else we should consider before sending the information?

You should double check that you have included the correct documents, and that the information you are releasing does not contain unnoticed personal data or other sensitive details which you did not intend to disclose.

This might be a particular issue if you are releasing an electronic document. Electronic documents often contain extra hidden information or 'metadata' in addition to the visible text of the document. For example, metadata might include the name of the author, or details of earlier draft versions. In particular, a spreadsheet displaying information as a table will often also contain the original detailed source data, even if this is not immediately visible at first glance.

You should ensure that staff responsible for answering requests understand how to use common software formats, and how to strip out any sensitive metadata or source data (eg data hidden behind pivot tables in spreadsheets).

See the [National Archives Redaction Toolkit](#) for further information, or read our more detailed guidance:

# Refusal notice

## At a glance

If you are relying on an exemption, you must issue a written refusal notice within the standard time for compliance, specifying which exemptions you are relying on and why.

If you have already done a public interest test, you should explain why you have reached the conclusion that the public interest in maintaining the exemption outweighs the public interest in disclosure.

If you are claiming extra time to consider the public interest test, you will not be able to give a final refusal notice at this stage, but you should explain which exemptions you are relying on. If your final decision is to withhold all or part of the information, you will need to send a second refusal notice to explain your conclusion on the public interest test.

If you are withholding information but are still required to reveal that you hold the information, you should also remember to do this.

## In brief

- [What do we have to include in a refusal notice?](#)
- [What if we are withholding only parts of a document?](#)
- [What if the requester is unhappy with the outcome?](#)

## What do we have to include in a refusal notice?

You must refuse requests in writing promptly or within 20 working days (or the standard time for compliance) of receiving it.

In the refusal notice you should:

- explain what provision of the Act you are relying on to refuse the request and why;
- give details of any internal review (complaints) procedure you offer or state that you do not have one; and
- explain the requester's right to complain to the ICO, including contact details for this.

For further information, read our more detailed guidance:

## Further Reading

 [Refusing a request: writing a refusal notice \(section 17\)](#)

For organisations

## What if we are withholding only parts of a document?



Often you can withhold only some of the information requested. In many cases, you can disclose some sections of a document but not others, or you may be able to release documents after having removed certain names, figures or other sensitive details (called 'redaction').

The Act does not lay down any rules about redaction. The following are guidelines for good practice.

- Make sure redaction is not reversible. Words can sometimes be seen through black marker pen or correction fluid. On an electronic document, it is sometimes possible to reverse changes or to recover an earlier version to reveal the withheld information. Ensure that staff responding to requests understand how to use common software formats, and how to strip out any sensitive information. Take advice from IT professionals if necessary.
- In particular, take care when using pivot tables to anonymise data in a spreadsheet. The spreadsheet will usually still contain the detailed source data, even if this is hidden and not immediately visible at first glance. Consider converting the spreadsheet to a plain text format (such as CSV) if necessary.
- Give an indication of how much text you have redacted and where from. If possible, indicate which sections you removed using which exemption.
- Provide as much meaningful information as possible. For example, when redacting names you may still be able to give an indication of the person's role, or which pieces of correspondence came from the same person.
- As far as possible, ensure that what you provide makes sense. If you have redacted so much that the document is unreadable, consider what else you can do to make the information understandable and useful for the requester.
- Keep a copy of both the redacted and unredacted versions so that you know what you have released and what you have refused, if the requester complains.

For further information, read our more detailed guidance:

You may also wish to refer to the [Redaction Toolkit](#)  produced by the National Archives.

# Vexatious and repeated requests

## At a glance

The Act allows you refuse a request if it is vexatious ie where the request is likely to cause a disproportionate or unjustifiable level of distress, disruption or irritation.

You can also refuse a request which seeks the same, or substantially the same information, as the applicant has previously requested, unless a reasonable time has passed between the requests.

Usually, you will still need to send the applicant a refusal notice telling them their request is vexatious or a repeat. However where you have sent the applicant such a notice in response to an earlier request, you may not need to send another.

Any future request from the same applicant still needs to be considered on its own merits, it can simply be ignored.

## In brief

- [When can we refuse a request as vexatious?](#)
- [When can we refuse a request because it is repeated?](#)
- [What if we want to refuse a request as vexatious or repeated?](#)

## When can we refuse a request as vexatious?

As a general rule, you should not take into account the identity or intentions of a requester when considering whether to comply with a request for information. You cannot refuse a request simply because it does not seem to be of much value. However, a minority of requesters may sometimes abuse their rights under the Freedom of Information Act, which can threaten to undermine the credibility of the freedom of information system and divert resources away from more deserving requests and other public business.

You can refuse to comply with a request that is vexatious. If so, you do not have to comply with any part of it, or even confirm or deny whether you hold information. When assessing whether a request is vexatious, the Act permits you to take into account the context and history of a request, including the identity of the requester and your previous contact with them. The decision to refuse a request often follows a long series of requests and correspondence.

The key question to ask yourself is whether the request is likely to cause a disproportionate or unjustifiable level of distress, disruption or irritation.

Bear in mind that it is the request that is considered vexatious, not the requester. If after refusing a request as vexatious you receive a subsequent request from the same person, you can refuse it only if it also meets the criteria for being vexatious.

You should be prepared to find a request vexatious in legitimate circumstances, but you should exercise care when refusing someone's rights in this way.

For further information, read our more detailed guidance:

## Further Reading

 [Dealing with vexatious requests \(section 14\)](#) 

For organisations

### When can we refuse a request because it is repeated?

You can refuse requests if they are repeated, whether or not they are also vexatious. You can normally refuse to comply with a request if it is identical or substantially similar to one you previously complied with from the same requester. You cannot refuse a request from the same requester just because it is for information on a related topic. You can do so only when there is a complete or substantial overlap between the two sets of information.

You cannot refuse a request as repeated once a reasonable period has passed. The reasonable period is not set down in law but depends on the circumstances, including, for example, how often the information you hold changes.

#### **Example**

"Please could you send me the latest copy of your register of interests? You kindly sent me a copy of this two years ago but I assume it may have been updated since then. Also I no longer have the copy you sent previously."

This request is not repeated because a reasonable period has elapsed.

### What if we want to refuse a request as vexatious or repeated?

You should send the requester a written refusal notice. If the request is vexatious or repeated, you need only state that this is your decision; you do not need to explain it further. However, you should keep a record of the reasons for your decision so that you can justify it to the Information Commissioner's Office if a complaint is made.

If you are receiving vexatious or repeated requests from the same person, you can send a single refusal notice to the applicant, stating that you have found their requests to be vexatious or repeated (as appropriate) and that you will not send a written refusal in response to any further vexatious or repeated requests.

This does not mean you can ignore all future requests from this person. For example, a future request could be about a completely different topic, or have a valid purpose. You must consider whether the request is vexatious or repeated in each case.

For further information, read our more detailed guidance:

## Further Reading

 [Dealing with repeat requests](#) 

For organisations

# Exemptions

## At a glance

The Freedom of Information Act contains a number of exemptions that allow you to withhold information from a requester. In some cases it will allow you to refuse to confirm or deny whether you hold information.

Some exemptions relate to a particular type of information, for instance, information relating to government policy. Other exemptions are based on the harm that would arise or would be likely arise from disclosure, for example, if disclosure would be likely to prejudice a criminal investigation or prejudice someone's commercial interests.

There is also an exemption for personal data if releasing it would be contrary to the UK General Data Protection Regulation (the UK GDPR) or the Data Protection Act 2018 (the DPA2018).

You can automatically withhold information because an exemption applies only if the exemption is 'absolute'. This may be, for example, information you receive from the security services, which is covered by an absolute exemption. However, most exemptions are not absolute but require you to apply a public interest test. This means you must consider the public interest arguments before deciding whether to disclose the information. So you may have to disclose information in spite of an exemption, where it is in the public interest to do so.

## In brief

- [When can we withhold information under an exemption?](#)
- [When can we use an exemption to refuse to say whether we have the information?](#)
- [What exemptions are there?](#)
- [Can we withhold information about people who have died?](#)
- [Is there anything else we need to know about exemptions?](#)

## When can we withhold information under an exemption?

Exemptions exist to protect information that should not be disclosed, for example because disclosing it would be harmful to another person or it would be against the public interest.

The exemptions in Part II of the Freedom of Information Act apply to information. This may mean that you can only apply an exemption to part of the information requested, or that you may need to apply different exemptions to different sections of a document.

You do not have to apply an exemption. However, you must ensure that in choosing to release information that may be exempt, you do not disclose information in breach of some other law, such as disclosing personal information in contravention of the UK GDPR or the DPA 2018. Nor do you have to identify all the exemptions that may apply to the same information, if you are content that one applies.

You can automatically withhold information because an exemption applies only if the exemption is

'absolute'. However, most exemptions are not absolute but are 'qualified'. This means that before deciding whether to withhold information under an exemption, you must consider the public interest arguments. This balancing exercise is usually called the public interest test (PIT). The Act requires you to disclose information unless there is good reason not to, so the exemption can only be maintained (upheld) if the public interest in doing so outweighs the public interest in disclosure.

### Example

The BBC received a request for two contracts relating to licence fee collection. The Commissioner accepted that some of the information in the contracts was commercially sensitive and it was likely that it would prejudice the BBC's commercial interests. However, this was not significant enough to outweigh the need for the BBC to be accountable for its use of public money, as well as the importance of informing an ongoing consultation about the licence fee.

(ICO decision notice [FS50296349](#))

In this case, even though the information fell within an exemption, the public interest favoured disclosure.

You can have extra time to consider the public interest. However, you must still contact the requester within the standard time for compliance to let them know you are claiming a time extension.

## When can we use an exemption to refuse to say whether we have the information?

In some cases, even confirming that information is or is not held may be sensitive. In these cases, you may be able to give a 'neither confirm nor deny' (NCND) response.

Whether you need to give a NCND response should usually depend on how the request is worded, not on whether you hold the information. You should apply the NCND response consistently, in any case where **either** confirming **or** denying could be harmful.

### Example

"Please could you send me the investigation file relating to the murder committed at 23 Any Street on 12 January 2011?"

In this case, assuming the murder was publicly reported, the police could confirm that they held some information on the topic, without giving the contents.

"Please could you send me any information you have linking Mr Joe Bloggs to the murder committed at 23 Any Street on 12 January 2011"

In this case the police do not confirm whether they hold any such information. If they do have information, this could tip off a suspect, and may be unfair to Mr Bloggs. If they don't have the

information, this could also be valuable information for the murderer. So the police would give the same response, whether or not they hold any such information.

Unless otherwise specified, all the exemptions below also give you the option to claim an exclusion from the duty to confirm or deny whether information is held, in appropriate cases.

If you think you may need to claim an exclusion from the duty to confirm or deny whether you hold information, then you will need to consider this duty separately from the duty to provide information. You will need to do this both:

- when you decide whether an exemption applies; and
- when you apply the public interest test.

If it would be damaging to even confirm or deny if information is held, then you must issue a refusal notice explaining this to the requester. In this situation we would not expect you to go on to address the separate question of whether any information that is held should be disclosed, at this stage. You will need to do this only if the requester successfully appeals against your NCND response and you do actually hold some information.

However, if you decide that you are willing to confirm or deny whether information is held, and you do in fact hold some information, then you will need to immediately go on to consider whether that information should be disclosed.

For further information, read our more detailed guidance:

## Further Reading

 [When to Refuse to Confirm or Deny Holding Information](#)   
For organisations

## What exemptions are there?

Some exemptions apply only to a particular category or class of information, such as information held for criminal investigations or relating to correspondence with the royal family. These are called class-based exemptions.

Some exemptions require you to judge whether disclosure may cause a specific type of harm, for instance, endangering health and safety, prejudicing law enforcement, or prejudicing someone's commercial interests. These are called prejudice-based exemptions.

This distinction between 'class-based' and 'prejudice-based' is not in the wording of the Act but many people find it a useful way of thinking about the exemptions.

The Act also often refers to other legislation or common law principles, such as confidentiality, legal professional privilege, or data protection. In many cases, you may need to apply some kind of legal 'test' - it is not as straightforward as identifying that information fits a specific description. It is important to read the full wording of any exemption, and if necessary consult our guidance, before trying to rely on it.

The exemptions can be found in Part II of the Act, at sections 21 to 44.

## Further reading

 [List of key FOI exemptions](#)

About the ICO

## Can we withhold information about people who have died?

The UK GDPR and the DPA 2018 do not cover information about people who have died, so you cannot rely on a section 40 exemption to withhold this type of information.

This may be a particular issue if you are a public authority that holds sensitive information such as health or social care records. Where you receive a request for this kind of information about someone who has died, the most appropriate exemption is likely to be section 41 (confidentiality). This is because the information would originally have been provided to a healthcare practitioner or social worker in confidence, and we consider this duty of confidentiality to extend beyond death.

Information about people who have died is likely to be covered by an exemption, because the Freedom of Information Act is about disclosure 'to the world' and it would often be inappropriate to make this type of information public. However, some requesters may have rights that allow them personally to access the information. For instance, the Access to Health Records Act 1990 gives the personal representative of the deceased (eg the executor of their will) the right to access their medical records. If you receive a request from someone who has the right to access the records in this way, you can refuse the request under section 21 (reasonably accessible) and handle the request under the Access to Health Records Act.

For further information, read our more detailed guidance:

## Further Reading

 [Information about the deceased](#) 

For organisations

PDF (240.41K)

## Is there anything else we need to know about exemptions?

Certain exemptions do not apply to historical records. A historical record is one over 20 years old. Other exemptions expire after 60 or 100 years. A full list of these can be found in section 63 of the Act.

When deciding whether or not an exemption applies, you will usually need to consider what information is already in the public domain. If the requested information or similar information is already publicly available, then this may affect:

- whether the requested disclosure will still cause prejudice;



- whether the test for applying a class-based exemption is still met;
- where the balance of the public interest lies.

These will be important considerations in many cases.

For further information, read our more detailed guidance:

## Further Reading

 [Information in the public domain](#) 

For organisations

# List of exemptions

- [Section 21 – information already reasonably accessible](#)
- [Section 22 – information intended for future publication](#)
- [Section 22A – research information](#)
- [Sections 23 and 24 – security bodies and national security](#)
- [Sections 26 to 29](#)
- [Sections 30 and 31 – investigations and prejudice to law enforcement](#)
- [Section 32 – court records](#)
- [Section 33 – prejudice to audit functions](#)
- [Section 34 – parliamentary privilege](#)
- [Sections 35 and 36 – government policy and prejudice to the effective conduct of public affairs](#)
- [Section 37 – communications with the royal family and the granting of honours](#)
- [Section 38 – endangering health and safety](#)
- [Section 39 – environmental information](#)
- [Section 40\(1\) – personal information of the requester](#)
- [Section 40\(2\) – Personal information](#)
- [Section 41 – confidentiality](#)
- [Section 42 – legal professional privilege](#)
- [Section 43 – trade secrets and prejudice to commercial interests](#)
- [Section 44 – prohibitions on disclosure](#)

## Section 21 – information already reasonably accessible

This exemption applies if the information requested is already accessible to the requester. You could apply this if you know that the requester already has the information, or if it is already in the public domain. For this exemption, you will need to take into account any information the requester gives you about their circumstances. For example, if information is available to view in a public library in Southampton, it may be reasonably accessible to a local resident but not to somebody living in Glasgow. Similarly, an elderly or infirm requester may tell you they don't have access to the internet at home and find it difficult to go to their local library, so information available only over the internet would not be reasonably accessible to them.

When applying this exemption, you have a duty to confirm or deny whether you hold the information, even if you are not going to provide it. You should also tell the requester where they can get it.

This exemption is absolute, so you do not need to apply the public interest test.

For further information, read our more detailed guidance:

## Section 22 – information intended for future publication

This exemption applies if, when you receive a request for information, you are preparing the material and definitely intend for it to be published, and it is reasonable not to disclose it until then. You do not need to have identified a publication date. This exemption does not necessarily apply to all draft materials or background research. It will only apply to the material you intend to be published.

You do not have to confirm whether you hold the information requested if doing so would reveal the content of the information.

This exemption is qualified by the public interest test.

For further information, read our more detailed guidance:

### Further Reading

 [Sections 22 and 22A – information intended for future publication and research information](#) 

For organisations  
PDF (316.34K)

## Section 22A – research information

This exemption applies if, when you receive a request for information,

- you hold information on an ongoing programme of research;
- there is an intention by someone –whether an individual or organisation, private or public sector - to publish a report of the research; and
- disclosure of the information would or would be likely to prejudice the research programme, the interests of participants in the programme, or a public authority holding or intending to publish a report of the research.

So long as the research programme is continuing, the exemption may apply to a wide range of information relating to the research project. There does not have to be any intention to publish the particular information that has been requested, nor does there need to be an identified publication date.

You do not have to confirm whether you hold the information requested if doing so would reveal the content of the information.

This exemption is qualified by the public interest test.

For further information, read our more detailed guidance:

### Further Reading

 [Sections 22 and 22A – information intended for future publication and research information](#) 

For organisations  
PDF (316.34K)

## Sections 23 and 24 – security bodies and national security

The section 23 exemption applies to any information you have received from, or relates to, any of a list of named security bodies such as the security service. You do not have to confirm or deny whether you hold the information, if doing so would reveal anything about that body or anything you have received from it. A government minister can issue a certificate confirming that this exemption applies.

This exemption is absolute, so you do not need to consider the public interest test.

The section 24 exemption applies if it is “required for the purpose of safeguarding national security”. The exemption does not apply just because the information relates to national security.

A government minister can issue a certificate confirming that this exemption applies and this can only be challenged on judicial review grounds. However, the exemption is qualified by the public interest test.

Section 25 is not an exemption, but gives more detail about the ministerial certificates mentioned above.

For further information, read our more detailed guidance:

### Further Reading

#### [Section 23 – Security bodies](#)

For organisations

#### [Section 24 – Safeguarding national security](#)

For organisations

#### [How sections 23 and 24 interact](#)

For organisations

## Sections 26 to 29

These exemptions are available if complying with the request would prejudice or would be likely to prejudice the following:

- defence (section 26);
- the effectiveness of the armed forces (section 26);
- international relations (section 27);
- relations between the UK government, the Scottish Executive, the Welsh Assembly and the Northern Ireland Executive (section 28);
- the economy (section 29); or
- the financial interests of the UK, Scottish, Welsh or Northern Irish administrations (section 29).

Section 27 also applies to confidential information obtained from other states, courts or international organisations.

All these exemptions are qualified by the public interest test.

For further information, read our more detailed guidance:

## Further Reading

 [Section 26 - defence](#)

For organisations

 [Section 27 - International relations](#)

For organisations

 [Section 28 – Relations within the UK](#)

For organisations

 [Section 29 - The Economy](#) 

For organisations

PDF (423.69K)

## Sections 30 and 31 – investigations and prejudice to law enforcement

The section 30 exemption applies to a specific category of information that a public authority currently holds or has ever held for the purposes of criminal investigations. It also applies to information obtained in certain other types of investigations, if it relates to obtaining information from confidential sources.

When information does not fall under either of these headings, but disclosure could still prejudice law enforcement, section 31 is the relevant exemption.

Section 31 only applies to information that does not fall into the categories in section 30. For this reason sections 30 and 31 are sometimes referred to as being mutually exclusive. Section 31 applies where complying with the request would prejudice or would be likely to prejudice various law enforcement purposes (listed in the Act) including preventing crime, administering justice, and collecting tax. It also protects certain other regulatory functions, for example those relating to health and safety and charity administration.

Both exemptions are qualified by the public interest test.

For further information, read our more detailed guidance:

## Further Reading

 [Section 30 - investigations and proceedings](#) 

For organisations

PDF (347.75K)

 [Section 31 - Law enforcement](#) 

For organisations

## Section 32 – court records

This exemption applies to court records held by any authority (though courts themselves are not covered by the Act).

To claim this exemption, you must hold the information only because it was originally in a document created or used as part of legal proceedings, including an inquiry, inquest or arbitration.

This is an unusual exemption because the type of document is relevant, as well as the content and purpose of the information they hold.

This exemption is absolute, so you do not need to apply the public interest test. You also do not have to confirm or deny whether you hold any information that is or would fall within the definition above.

For further information, read our more detailed guidance:

## Further Reading

 [Section 32 Court inquiry and arbitration records](#) 

External link

## Section 33 – prejudice to audit functions

This exemption can only be used by bodies with audit functions. It applies where complying with the request would prejudice or would be likely to prejudice those functions.

This exemption is qualified by the public interest test.

For further information, read our more detailed guidance:

## Further Reading

 [Section 33 – public audit](#) 

For organisations  
PDF (269.34K)

 [Impact of disclosure on the voluntary supply of information](#) 

For organisations  
PDF (272.06K)

## Section 34 – parliamentary privilege

You can use this exemption to avoid an infringement of parliamentary privilege. Parliamentary privilege protects the independence of Parliament and gives each House of Parliament the exclusive right to oversee its own affairs. Parliament itself defines parliamentary privilege, and the Speaker of the House of Commons can issue a certificate confirming that this exemption applies; the Clerk of the Parliaments can do the same for the House of Lords.

This exemption is absolute, so you do not need to apply the public interest test.

For further information, read our more detailed guidance:

## Further Reading

 [Section 34 – Parliamentary privilege](#) 

For organisations  
PDF (275.23K)

## Sections 35 and 36 – government policy and prejudice to the effective conduct of public affairs

These two sections form a mutually exclusive pair of exemptions in the same way as section 30 and section 31.

The section 35 exemption can only be claimed by government departments or by the Welsh Assembly Government. It is a class-based exemption, for information relating to:

- the formulation or development of government policy;
- communications between ministers;
- advice from the law officers; and
- the operation of any ministerial private office.


Section 35 is qualified by the public interest test.


For policy-related information held by other public authorities, or other information that falls outside this exemption but needs to be withheld for similar reasons, the section 36 exemption applies.

The section 36 exemption applies only to information that falls outside the scope of section 35. It applies where complying with the request would prejudice or would be likely to prejudice “the effective conduct of public affairs”. This includes, but is not limited to, situations where disclosure would inhibit free and frank advice and discussion.

This exemption is broad and can be applied to a range of situations.

### Example

A council refused to disclose a list of schools facing financial difficulties, because this could damage the schools’ ability to recruit pupils, as well as making schools less likely to co-operate and share financial information freely with the council (ICO decision notice [FS50302293](#) ).

A university refused to disclose a complete list of staff email addresses. On a previous occasion when email addresses had been disclosed, this led to a security attack, as well as an increase in spam, phishing, and emails directed inappropriately (ICO decision notice [FS50344341](#) ).

The Cabinet Office refused to release details of the discussions between political parties that took place between the general election and the formation of the coalition government. This was necessary to

ensure that a stable government could be formed, as politicians needed to be able to freely discuss their differences as well as seek impartial advice from the civil service (ICO decision notice [FS50350899](#)).

Section 36 differs from all other prejudice exemptions in that the judgement about prejudice must be made by the legally authorised qualified person for that public authority. A list of qualified people is given in the Act, and others may have been designated. If you have not obtained the qualified person's opinion, then you cannot rely on this exemption. The qualified person's opinion must also be a "reasonable" opinion, and the Information Commissioner may decide that the section 36 exemption has not been properly applied if they find that the opinion given isn't reasonable.

In most cases, section 36 is a qualified exemption. This means that even if the qualified person considers that disclosure would cause harm, or would be likely to cause harm, you must still consider the public interest. However, for information held by the House of Commons or the House of Lords, section 36 is an absolute exemption so you do not need to apply the public interest test.

For further information, read our more detailed guidance:

## Further Reading

### [Section 35 - Government policy](#)

For organisations

### [Section 36 - Prejudice to the effective conduct of public affairs](#)

For organisations

### [Section 36: Record of the qualified person's opinion](#)

For organisations

## Section 37 – communications with the royal family and the granting of honours

This exemption has been changed since the Freedom of Information Act was first published, so you should refer to an up-to-date copy at [www.legislation.gov.uk](http://www.legislation.gov.uk).

It covers any information relating to communications with the royal family and information on granting honours. This exemption is absolute in relation to communications with the monarch, the heir to the throne, and the second in line of succession to the throne, so the public interest test does not need to be applied in these cases.

All other information under the scope of this exemption is qualified, so the public interest test must be applied.

For further information, read our more detailed guidance:

## Further Reading



## Section 38 – endangering health and safety

You can apply the section 38 exemption if complying with the request would or would be likely to endanger anyone's physical or mental health or safety. In deciding whether you can apply this exemption, you should use the same test as you would for prejudice. This exemption is qualified by the public interest test.

For further information, read our more detailed guidance:

### Further Reading

## Section 39 – environmental information

You should deal with any request that falls within the scope of the Environmental Information Regulations 2004 under those Regulations. This exemption confirms that, in practice, you do not also need to consider such requests under the Freedom of Information Act.

Only public authorities that are covered by the Regulations can rely on this exemption. A small number of public authorities, including the BBC and other public service broadcasters, are not subject to the Environmental Information Regulations. They should handle requests for environmental information under the Freedom of Information Act.

This exemption is qualified by the public interest test, but because you must handle this type of request under the Environmental Information Regulations, it is hard to imagine when it would be in the public interest to also consider it under the Freedom of Information Act.

### Further Reading

## Section 40(1) – personal information of the requester

This exemption confirms that you should treat any request made by an individual for their own personal data as a data protection subject access request. You should apply this to any part of the request that is for the requester's own personal data. They should not be required to make a second, separate subject access request for these parts of their request. See our [Guide to UK GDPR - Right of Access](#) for advice on how to handle subject access requests.

If the information contains some of the requester's personal data plus other non-personal information, then

you will need to consider releasing some of the information under the UK GDPR or the DPA 2018 and some under the Freedom of Information Act.

This exemption is absolute, so you do not need to apply the public interest test.

Requested information may involve the personal data of both the requester and others. For further information, read our guidance:

## Further Reading

 [Section 40 and Regulation 13 – personal information](#) 

For organisations

## Section 40(2) – Personal information

This exemption covers the personal data of third parties (anyone other than the requester) where complying with the request would breach any of the principles in the UK GDPR.

If you wish to rely on this exemption, you need to refer to the UK GDPR as the data protection principles are not set out in the Freedom of Information Act. More details can be found in our [Guide to the UK GDPR - the Principles](#).

This exemption can only apply to information about people who are living; you cannot use it to protect information about people who have died.

The most common reason for refusing information under this exemption is that disclosure would contravene UK GDPR principle (a) because there is no lawful basis for processing. Section 40(2) is an absolute exemption, so you do not need to apply the public interest test. However, you may need to include public interest arguments when considering lawfulness under principle (a).

Section 40 includes other provisions for people's data protection rights, and these provisions are qualified by a public interest test.

For further information, read our more detailed guidance:

## Further Reading

 [Section 40 and Regulation 13 – personal information](#) 

For organisations

 [Section 40 – requests for personal data about public authority employees](#) 

External link

 [Outsourcing – FOIA and EIR obligations](#) 

For organisations

 [How to disclose information safely – removing personal data from information requests and datasets](#) 

External link

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## Section 41 – confidentiality

This exemption applies if the following two conditions are satisfied:

- you received the information from someone else; and
- complying with the request would be a breach of confidence that is actionable (further information about what is meant by actionable is provided in our detailed guidance below).

You cannot apply this exemption to information you have generated within your organisation, even if it is marked “confidential”. However, you can claim it for information you originally received from someone else but then included in your own records.

To rely on this exemption, you must apply the legal principles of the common law test of confidence, which is a well established though developing area of law.

This exemption is absolute so you do not need to apply the public interest test. However, you will still need to consider the public interest in disclosure, because the law of confidence recognises that a breach of confidence may not be actionable when there is an overriding public interest in disclosure.

You should carefully consider how you use confidentiality clauses in contracts with third parties and set reasonable levels of expectations about what may be disclosed.

For further information, read our more detailed guidance:

### Further Reading

 [Section 41 – information provided in confidence](#) 

For organisations  
PDF (371.33K)

 [Impact of disclosure on the voluntary supply of information](#) 

For organisations  
PDF (272.06K)

## Section 42 – legal professional privilege

This applies whenever complying with a request would reveal information that is subject to ‘legal professional privilege’ (LPP) or the equivalent Scottish rules. LPP protects information shared between a client and their professional legal advisor (solicitor or barrister, including in-house lawyers) for the purposes of obtaining legal advice or for ongoing or proposed legal action. These long-established rules exist to ensure people are confident they can be completely frank and candid with their legal adviser when obtaining legal advice, without fear of disclosure.

This exemption is qualified by the public interest test.

For further information, read our more detailed guidance:

## Section 43 – trade secrets and prejudice to commercial interests

This exemption covers two situations:

- when information constitutes a trade secret (such as the recipe for a branded product); or
- when complying with the request would prejudice or would be likely to prejudice someone’s commercial interests.

Both parts of this exemption are qualified by the public interest test.

For further information, read our more detailed guidance:

### Further Reading

 [Section 43 - Commercial interests](#) 

For organisations

## Section 44 – prohibitions on disclosure

You can apply this exemption if complying with a request for information:

- is not allowed under law;
- would be contrary to a retained EU obligation; or
- would constitute contempt of court.

This exemption is often used by regulators. For example, the Information Commissioner is prohibited by section 132 in Part 5 of the DPA 2018 from disclosing certain information they have obtained in the course of their duties, except in specified circumstances.

The Freedom of Information Act does not override other laws that prevent disclosure, which we call ‘statutory bars’.

This exemption is absolute, so you do not need to apply the public interest test, but bear in mind that some statutory bars may refer to the public interest.

For further information, read our more detailed guidance:

### Further Reading

 [Section 44 - prohibitions on disclosure](#) 

For organisations  
PDF (255.64K)

 [Impact of disclosure on voluntary supply of information](#) 

For organisations  
PDF (272.06K)

# Prejudice test

For the purposes of the Act, 'prejudice' means causing harm in some way. Many of the exemptions listed below apply if disclosing the information you hold would harm the interests covered by the exemption. In the same way, confirming or denying whether you have the information can also cause prejudice. Deciding whether disclosure would cause prejudice is called the prejudice test.

To decide whether disclosure (or confirmation/denial) would cause prejudice:

- you must be able to identify a negative consequence of the disclosure (or confirmation/denial), and this negative consequence must be significant (more than trivial);
- you must be able to show a link between the disclosure (or confirmation/denial) and the negative consequences, showing how one would cause the other; and
- there must be at least a real possibility of the negative consequences happening, even if you can't say it is more likely than not.

For further information, read our more detailed guidance:

## Further Reading

 [The prejudice test](#) 

For organisations  
PDF (327.48K)

 [Information in the public domain](#) 

For organisations

# Public interest test

If the exemption you wish to apply is qualified, then you will need to do a public interest test, even if you know the exemption applies.

If you think that you may need to claim an exclusion from the duty to confirm or deny, then you will need to consider the public interest test for this duty. You will need to do this separately from the public interest test for the duty to provide information.

For 'neither confirm nor deny' cases (NCND) the public interest test involves weighing the public interest in confirming whether or not information is held against the public interest in refusing to do this. The public interest in maintaining the exclusion from the duty to confirm or deny would have to outweigh the public interest in confirming or denying that information is held, in order to justify an NCND response.

Similarly, when considering whether you should disclose information, you will need to weigh the public interest in disclosure against the public interest in maintaining the exemption. You must bear in mind that the principle behind the Act is to release information unless there is a good reason not to. To justify withholding information, the public interest in maintaining the exemption would have to outweigh the public interest in disclosure.

Note that the wording of the test refers to the public interest in maintaining the exemption (or exclusion). In other words, you cannot consider all the arguments for withholding the information (or refusing to confirm whether it is held), only those which are inherent in the exemption or exclusion ie relate directly to what it is designed to protect.

## Example

A government department is seeking to rely on section 35 to withhold information relating to the development of a controversial policy.

It argues that disclosure would:

- a) have a negative impact on the ongoing discussions about this policy;
- b) discourage ministers and civil servants from openly debating controversial or unpopular options when discussing similar policies in the future;
- c) cause stress and upset to the people involved;
- d) potentially lead to threats or harassment.

While a) and b) are legitimate public interest considerations for this exemption, c) and d) are not. Instead, they may suggest that section 38 (health and safety) or section 40 (data protection) might be relevant.

You can withhold information only if it is covered by one of the exemptions and, for qualified exemptions, the public interest in maintaining the exemption outweighs the public interest in disclosure. You must follow the steps in this order, so you cannot withhold information because you think it would be against the public interest without first identifying a specific exemption.

For further information, read our more detailed guidance:

## Further Reading

 [The public interest test](#) 

For organisations

 [Information in the public domain](#) 

For organisations

## How much extra time can we have to consider the public interest test?

The law says you can have a “reasonable” extension of time to consider the public interest test. We consider that this should normally be no more than an extra 20 working days, which is 40 working days in total to deal with the request. Any extension beyond this time should be exceptional and you must be able to justify it.

To claim this extra time, you must:

- contact the requester in writing within the standard time for compliance;
- specify which exemption(s) you are seeking to rely on; and
- give an estimate of when you will have completed the public interest test.

You must identify the relevant exemptions and ensure they can be applied in this case, for example, by considering the prejudice test before you do this. You cannot use the extra time for considering whether an exemption applies. You should release any information that is not covered by an exemption within the standard time.

When you have come to a conclusion on the balance of the public interest, you should:

- disclose the information; or
- write to the requester explaining why you have found that the public interest favours maintaining the exemption.

# Complaints (internal reviews)

Under the Act, there is no obligation for an authority to provide a complaints process. However, it is good practice (under the section 45 code of practice) and most public authorities choose to do so.

If you do have a complaints procedure, also known as an internal review, you should:

- ensure the procedure is triggered whenever a requester expresses dissatisfaction with the outcome;
- make sure it is a straightforward, single-stage process;
- make a fresh decision based on all the available evidence that is relevant to the date of the request, not just a review of the first decision;
- ensure the review is done by someone who did not deal with the request, where possible, and preferably by a more senior member of staff; and
- ensure the review takes no longer than 20 working days in most cases, or 40 in exceptional circumstances.

When issuing a refusal notice, you should state whether you have an internal review procedure and how to access it. If a requester complains even when you have not refused a request, you should carry out an internal review if they:

- disagree with your interpretation of their request;
- believe you hold more information than you have disclosed; or
- are still waiting for a response and are unhappy with the delay.

Even if your internal review upholds your original decision (that, as at the date of the request, the information was exempt from disclosure) you may wish to release further information if circumstances have changed and your original concerns about disclosure no longer apply. You are not obliged to do this but it may resolve matters for the requester and reduce the likelihood of them making a complaint to the Information Commissioner if you do.

## Further Reading

 [FOI complaints and ICO enforcement powers](#)

For organisations