Freedom of Information Act

Awareness guidance 11
Time for compliance

Information Commissioner's Office
Promoting public access to official information and protecting your personal information

The Information Commissioner's Office (ICO) has produced this guidance as part of a series of good practice guidance designed to aid understanding and application of the Freedom of Information Act 2000. The aim is to introduce some of the key concepts in the Act and to suggest the approaches that may be taken in response to information requests.

The guidance will be developed over time in the light of practical experience.

Awareness Guidance No 11 takes the form of FAQs on a range of questions relating to the time for compliance with requests.

1. What is the time limit for responding to a request for information?

A public authority must inform the applicant in writing whether it holds the information requested and if so, communicate that information to the applicant, **promptly, but not later than 20 working days after receipt** of the request; section 10(1).

2. When does the 20 working day clock start?

The 20 working day clock starts:

- the day **after** the public authority receives the request. According to section 10(1) the time limit for compliance is the twentieth working day **following** the date of receipt.

or

- the day the authority receives further information it reasonably requires in order to identify and locate the information requested; section 1(3).

Please refer to question 4 below, regarding the effect of section 1(3) of the Act.

3. When is a request received by the public authority?

A request is received when it is delivered to the public authority, or when it is delivered to the inbox of a member of staff. The date of receipt is **not** the date the request is passed to the appropriate person for processing.

In respect of e-mails, however, where an automated 'out of office' message provides instructions on how to re-direct a message, the request would not be 'received' until it was re-sent to the alternative contact.

It is in the interests of the public authority to ensure that mail is distributed, and acted upon, promptly. Public authorities will also need to give thought to their procedures for dealing with communications where a member of staff is unexpectedly absent. (See also question 10 below – 'What happens if a public authority does not respond within the time limit?').

Public authorities may wish to consider the following good practice points:

- It may be helpful to provide and publicise a separate e-mail address for FOI requests, although there would still be a duty to deal with requests received anywhere within the authority;
- To cover periods of absence, it would be advisable for staff to use the automated 'out of office' facility for e-mails and to provide alternative contact details.
- Where an alternative contact is provided in an 'out of office' message, the contact should advise the original recipient of action taken in respect of the request.
- It would be good practice to acknowledge receipt of requests and to refer to the 20 working day time limit, so that applicants know their request is being dealt with. It would also be good practice to let applicants know when they might expect a full response.

4. What if the authority is unable to find the information requested, because the applicant has not provided enough details?

Under section 1(3) of the Act,

> "where a public authority –
>
> (a) reasonably requires further information in order to identify and locate the information requested, and
>
> (b) has informed the applicant of that requirement"

the authority is not required to comply with the request until that further information is provided.

Whilst the applicant may have made an FOI request under the terms of the Act, by describing the information he/she seeks, the 20 working day time limit

would not start until the authority had sufficient information to enable it to deal with that request.

However, authorities should not delay contacting the applicant under s1(3), in order to give themselves more time to respond to the request.

Part II of the Lord Chancellor's Code of Practice deals with the provision of advice and assistance where an authority is relying on section 1(3). The following guidance is provided in paragraph 9:

> "Authorities should be aware that the aim of providing assistance is to clarify the nature of the information sought, not to determine the aims or motivation of the applicant. Care should be taken not to give the applicant the impression that he or she is obliged to disclose the nature of his or her interest as a precondition to exercising the rights of access, or that he or she will be treated differently if he or she does (or does not). Public authorities should be prepared to explain to the applicant why they are asking for more information. It is important that the applicant is contacted as soon as possible, preferably by telephone, fax or e-mail, where more information is needed to clarify what is sought."

The Code goes on to suggest forms such assistance might take, for example, 'providing access to detailed catalogues and indexes'.

There is a distinction, however, between requiring further details in order to identify and locate information and providing advice and assistance in order to help the applicant focus his request, for example, because the request is voluminous and retrieving all the information would be likely to exceed the cost ceiling. In the latter case, the authority would not be able to rely on s.1(3) and the 20 working days would begin the day after receipt of the request, as described in question 2.

This distinction is illustrated by the following examples:

Example 1

Request: Please send me all the information you hold about my ancestor John Smith, who served in the British Army during the 19th Century.

Response: The applicant has described the information he seeks, but the description is not sufficient to enable the authority to identify and locate the correct record. The authority informs the applicant that it requires further information, under section 1(3), (for example, a narrowing of dates, information about regiment or location) and the 20 working days does not start until the authority has been supplied with that information.

Example 2

Request: I would like all the information you hold about every soldier named John Smith who served in the British Army during the 19th Century.

Response: The applicant has described the information he seeks and the authority is able to identify and locate the information. The 20 working days begin. However, the request is potentially voluminous and so, under 'advice and assistance', the authority may wish to go back to the applicant to assist him in focussing the request.

5. In what circumstances does the 20 working day 'clock' stop?

If the public authority is charging a fee (which must be calculated according to the Fees Regulations), the applicant has a maximum period of 3 months to pay. According to section 9(2) of the Act, the 3 months would begin on the day the Fees Notice is 'given' to the applicant. The Information Commissioner takes this to mean the day the authority sends the notice.

According to section 10(2) of the Act, the period starting with the day the notice is given and ending on the day the payment is received is disregarded from the 20 working day calculation. Therefore, the 20 working day 'clock' would stop, in effect, the day before the notice is sent and would **re-start** the day after the fee is received.

6. Where the applicant is required to pay a fee, do the 20 working days resume once the cheque is received, or cleared?

The 20 working days would resume once the cheque had cleared. According to section 9(2), the public authority is not obliged to comply until the fee is 'paid'. However, authorities should ensure that cheques are banked promptly.

7. What if the public authority needs more time to consider exemptions?

Any information which the public authority is required to release must be disclosed to the applicant within the 20 working day time limit. Where the authority is relying on one or more of the exemptions and is withholding information, it must issue a Refusal Notice (under section 17 of the Act) within the same timeframe, specifying the exemption and why it applies.

There is a provision in the Act, at section 10(3), which allows the 20 working day time limit to be extended to a 'reasonable' time, where the authority is required to apply the public interest test, because one of the 'qualified' exemptions applies. However, the authority must inform the applicant in its Refusal Notice if it needs more time to consider the public interest in disclosure and must give an estimate of the date by which it expects to make its decision. [FOI Act, s10(3)]

A public authority must be prepared to justify to the Information Commissioner any time it takes, beyond the 20 working days, to consider disclosure in the

public interest. Should the Information Commissioner receive a complaint, he would need such information in order to decide whether the time taken was 'reasonable in the circumstances'.

8. Can the 20 working day time limit be extended for certain groups of public authority?

The Act gives the Secretary of State the power to make regulations extending the 20 working day time limit, to a maximum of 60 working days. Such regulations may prescribe different time limits in relation to different cases, and may 'confer a discretion on the Commissioner'. [FOI Act, s10(4)&(5)]

9. If an authority does not hold the information requested and transfers the request to another authority, when would the 20 working day clock start?

The 20 working days would not begin until the authority, to which the request is transferred, receives the request.

10. What happens if a public authority does not respond within the time limit?

Failure to respond within the time limit would be a breach of the Act.

The Information Commissioner has a general duty under s47 of the Act to promote good practice. Should he become aware of a consistent failure to respond to requests within the time limit, he may issue an Enforcement Notice.

More information

If you need any more information about this or any other aspect of freedom of information, please contact us.

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E-mail: please use the online enquiry form on our website

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This guidance will be reviewed and considered from time to time in line with new decisions of the Information Commissioner, Tribunal and courts on freedom of information cases. It is a guide to our general recommended approach to this area, although individual cases will always be decided on the basis of their particular circumstances.