Information Commissioner's Office

# Time limits for compliance under the Freedom of Information Act (Section 10)

## Freedom of Information Act

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## Introduction

1. The Freedom of Information Act 2000 (FOIA) gives rights of public access to information held by public authorities.

2. An overview of the main provisions of FOIA can be found in The Guide to Freedom of Information.

3. This is part of a series of guidance, which goes into more detail than the Guide, to help public authorities to fully understand their obligations and promote good practice.

4. This guidance outlines the time limits for complying with a request made under the FOIA.

## Overview

- Section 10 of the Act sets out the time frames within which a public authority must respond to an FOIA request.

- It applies whenever the public authority has:

  - a duty under section 1(1)(a) confirm or deny whether the information is held;

  - a duty under section 1(1)(b) to provide information that is held to the requester;

  - a duty under section 17 to issue a refusal notice explaining why a request has been refused.

- Authorities must respond to requests promptly, and by the twentieth working day following the date of receipt of the request.

- A working day is any day other than a Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.

- Where required, an authority may claim a reasonable extension of time to consider the public interest test. However, this must not extend beyond an additional 20 working days.

- If the authority needs further details to identify or locate the

information, then the 20 working days will commence the day after it receives the required clarification from the requester.

- Where the authority requires a fee to process the request, the 'clock' will stop on the date it issues a fees notice to the requester and restart once payment is received.

- If a public authority is transferring the request because it does not hold the information itself but believes it to be held by another public authority, the transferring authority must inform the requester that the information is not held within the 20 working day limit. The 20 working day clock starts for the receiving authority the day after it receives the request.

- There are variations to the normal 20 working day limit for requests to schools and some archived public records.

- There are also variations for the armed forces and information held outside the UK, but these can only be applied with the Information Commissioner's prior consent.

## What FOIA says

5. Section 10 of the Act states:

> **10.**—(1) Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.
>
> (2) Where the authority has given a fees notice to the applicant and the fee is paid in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.
>
> (3) If, and to the extent that—
>
> (a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or
>
> (b) section 1(1)(b) would not apply if the condition in section

2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.

(4) The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with, the regulations.

(5) Regulations under subsection (4) may—

(a) prescribe different days in relation to different cases, and
(b) confer a discretion on the Commissioner.

(6) In this section—

"the date of receipt" means—

(a) the day on which the public authority receives the request for information, or
(b) if later, the day on which it receives the information referred to in section 1(3);

"working day" means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.

6. Section 10 of the Act sets out the timescales within which a public authority must respond to an FOIA request.

7. These timescales apply where the authority has:

- a duty under section 1(1)(a) to confirm or deny whether the information is held;
- a duty under section 1(1)(b) to provide information that is held to the requester;
- a duty under section 17 to issue a refusal notice explaining why a request has been refused.

8. Section 10 specifies that a public authority must comply promptly, and no later than 20 working days after the date of receipt of the request.

9. However, there is provision for an authority to claim a reasonable extension to this limit, up to an additional 20 working days, where it needs more time to consider the public interest test.

10. Section 10 also allows public authorities to apply variations to the normal 20 working day timescale in some limited circumstances.

## Refusing requests

11. If an authority is relying on one of the exemptions in Part II of the Act to either refuse to confirm or deny whether information is held or to refuse to provide information, then under section 17(1) it has a duty to issue the requester with a refusal notice within the time for compliance with section 1(1).

12. As outlined earlier, the time for compliance with section 1(1) is defined by section 10(1), which means that the notice must be issued promptly and within 20 working days of the date of receipt of the request.

13. More detailed information on issuing refusal notices can be found in our guidance Refusing a request: Writing a refusal notice.

14. If only some of the requested information is exempt, then the authority will still have to comply with its section 1(1) duties in respect to any information which is not covered promptly and within 20 working days.

## The obligation to respond promptly and within 20 working days

> **10.**—(1) Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.

15. Section 10(1) states that an authority must comply with section 1(1) of the Act '*…promptly and in any event not later than the twentieth working day following the date of receipt.'*

16. This means that when an authority is not relying upon a part II exemption and *does* hold the requested information, it will need to both issue the requester with written confirmation of this *and* provide the information promptly, and within 20 working days, in order to comply with its obligations under section 10(1).

17. If the authority is not relying upon a part II exemption and *does not* hold the information then its only requirement under section 10(1) will be to inform the requester of this in writing promptly and within 20 working days.

18. It also follows that a general response (such as a holding letter or acknowledgement) issued within 20 working days, but which fails to confirm or deny whether the information is held, or provide information, will not be sufficient to comply with the requirements of section 10(1).

19. Whilst 20 working days is the normal timescale for compliance, there is provision within section 10 for an authority to extend or vary this time limit under certain circumstances.

20. These conditions under which these extensions and variations may be applied are outlined in detail later in the guidance.

**Requirement to respond promptly**

21. The obligation to respond promptly means that an authority should comply with a request as soon as is reasonably practicable.

22. Whilst this is linked to the obligation to respond within 20 working days, it should be treated as a separate requirement.

23. An authority will therefore need to both respond promptly *and* within 20 working days in order to comply with section 10(1).

24. Authorities should regard the 20 working day limit as a 'long stop', in other words the latest possible date on which they may issue a response.

25. It also follows that an authority which provides its response close to, or on, the final day of the 20 working day limit ought to be able to both account for, and justify, the length of time taken to comply with the request.

**Example**
In Decision Notice FS50307811 the complainant maintained that the University of Cambridge had failed to respond promptly to his request for information about the restrictions contained in its post dismissal compensation settlements. The university had disclosed some of this information on the 20th working day.

The university's submissions to the Information Commissioner showed that its HR team had been required to examine each agreement individually in order to provide definitive information, as the settlements had all been negotiated separately. The team had then held a meeting to discuss any issues concerning the information, at which point it was decided to take legal advice. The matter was subsequently referred to the university's in-house lawyers, who took around two weeks to draft their response. The university explained this turnaround time was down to the fact that its legal advisers had a heavy workload in providing advice to all departments of the institution, and also because they were not specialists in freedom of information, meaning they might be expected to have to conduct their own research before providing advice.

The Information Commissioner did not uphold the complaint, stating that:
*'…the greater part of the time taken in responding to the complainant's request was taken up with the location and verification of the requested information by University's HR department and considerations by its legal team. Noting that neither department has a primary responsibility for freedom of information and is likely to be fully engaged with its daily tasks, the Commissioner is unable to conclude that these time periods were unreasonable in the circumstances.*

*For the reasons expressed above, therefore, the Commissioner concludes that the University's initial response to the complainant's request was provided promptly and there does not appear to have been undue delay in its handling of the request.'* (paragraphs 24 & 25)

## Calculating the date of receipt

26. Section 10(6) states:

> **10.**—(6) In this section— .
>
> "the date of receipt" means—
>
> (a) the day on which the public authority receives the request for information, or
>
> (b) if later, the day on which it receives the information referred to in section 1(3);
>
> "working day" means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.

27. The date of receipt will be either;

    - The day on which the request is physically or electronically delivered to the authority, or directly into the email inbox of a member of staff; **or**

    - if the authority has asked the requester for further details to identify and locate the requested information, the date on which the necessary clarification is received.

28. An exception to this will be where the request has been emailed to an absent member of staff, and this has generated an 'out of office' message with instructions on how to re-direct the message to another contact.

29. Where this is the case, the date of receipt will be the day the request arrives in the inbox of that contact.

**The definition of a working day**

30. The Act defines a working day as '*…any day other than a Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom'.*

31. Authorities should take particular note that any day which is a bank holiday in any one of the four nations comprising the UK will be a non-working day for the purposes of the FOIA.

32. For example, St. Patrick's Day can be counted as a non-working day in all countries covered by the legislation, even

though it is only a bank holiday in Northern Ireland, and not in England Scotland or Wales.

33. Where authorities are closed for privilege days in addition to bank holidays, these will not count as non-working days.

34. For the purposes of the Act, a 'working day' will end at midnight regardless of the opening hours of the authority. Therefore, any request which arrives before that time should be regarded as having been received that day.

35. This principle was established in the Tribunal case of *Berend v ICO & London Borough of Richmond upon Thames* (EA/2006/0049 & 50, 12 July 2007) which stated '*There is no definition within the Act as to the length of a day and in the absence of any such definition, we are satisfied that a day ends at midnight…' (Paragraph 63)*

**Requests received on non-working days**

36. Section 10 of the FOIA defines the date of receipt as '*the day on which the public authority receives the request for information*'.

37. As there is no requirement for this to be a working day, the date of receipt can also be a non-working day such as a weekend or bank holiday.

38. If the request is received on a non-working day, the clock will still start on the following working day.

39. However, if the following day is another non-working day then the clock will start on the next working day after that.

**Example 1**
A public authority which is closed at weekends receives a request on a Saturday. As the time for compliance only commences on the next working day, the clock will start on the following Monday.

**Example 2**
The same public authority receives a request on Easter Sunday. As the following Monday is a bank holiday, the clock will begin on the next working day after that, which in this case would be Tuesday.

## The effect of requesting clarification under section 1(3)

40. Section 10(6) provides that the date of receipt will be the day on which the authority receives the request or '*if later, the day on which it receives the information referred to in section 1(3)*'

41. Section 1(3) states:

> **1.—**(3)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 obliged to comply with subsection (1) unless it is supplied with that further information.

42. This effectively means that where a public authority needs more details to identify and locate the requested information and has contacted the requester for further clarification, the date of receipt will be the day the authority receives the information it requires to comply with the request.

43. The 20 working day clock will start the day after the authority receives the necessary clarification.

> **Example**
> On Monday 9 September a public authority receives a request for the following;
>
> *'Please provide me with all the information you hold about my ancestor John Smith, who served in the British Army during the 19th Century.'*
>
> Although the applicant has described the information he wants, his description is not sufficient to enable the authority to identify and locate the correct record.
>
> The authority writes back to the applicant to explain that it requires further details about the dates, locations and regiment names in order to find the information.
>
> On Tuesday 17 September the authority receives the clarification it needs to locate the information.

In this case, therefore, the authority would treat 17 September as being the date of receipt for the request.

The 20 working day clock will start on the following day, which in this case will be Wednesday 18 September.

44. Where a public authority does require further information to process a request, there should be no undue delay in contacting the requester.

45. This point is emphasised in Part II paragraph 9 of the Section 45 Code of Practice which states, *'…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.'*

**Advice and assistance provided outside section 1(3).**

46. It is important to bear in mind that sections 1(3) and 10(6)(b) are only applicable in cases where the authority cannot comply with the request without further information.

47. If the authority does have enough information to identify and locate the information, and is offering advice and assistance for any another reason, for example to ask if the requester is interested in any other information, the clock does not stop but continues to run from the original date of receipt.

48. However, if the authority has refused the request, and its offer of advice and assistance is designed to help the requester submit a reworked version it can comply with, any revised request subsequently made by that requester should be treated as a new request and the time for compliance reset to 20 working days.

**Example**
On March 4 a requester asks a public authority to provide;

*'All the information you hold about every soldier named John Smith who served in the British Army during the 19th Century.'*

The authority believes it can identify and locate the information from the description provided, so the 20 working

clock starts.

However, having considered the volume of the information caught by the request, the authority estimates that the cost of complying will exceed the section 12 limits.

On March 10 the authority issues the requester with a refusal notice. At the same time it offers advice and assistance to help him narrow the scope of the request.

The requester takes the authority's advice and submits a more focused version of the request on March 15. This is effectively a new request so the time for compliance resets to 20 working days, with the 'date of receipt' being March 15.

## Pausing the clock for collection of fees

49. Section 10(2) states:

> **10**—(2) Where the authority has given a fees notice to the applicant and the fee is paid in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.

50. If a public authority intends to charge for payment of fees then it must issue a Fees Notice to the requester.

51. Under section 10(2) the period starting from the day the Fees Notice is given and ending on the day the payment is received can be disregarded from any calculation of the 20 working day time limit.

52. The Information Commissioner's interpretation of the wording '*the day on which the fees notice is given'* is the date on which the notice is sent to the requester.

53. The authority should therefore pause the 20 working day clock on the day it issues the Fees Notice. The clock will restart again the day after the fee is received.

54. If the requester elects to pay by cheque then the clock will only restart once this has cleared. However, cheques should be

banked promptly to ensure there is no undue delay in processing the request.

55. Should the requester fail to provide the fee within 3 months of the fees notice being issued, then under section 9(2) of the Act, the authority will no longer obliged to comply with the request.

## Transferring requests to another authority

56. In the event that the authority does not hold the information but has elected to transfer the request to another authority;

    - The original authority must promptly, and within the 20 working day time for compliance, provide the requester with written notification that it does not hold the requested information.

    - The 20 working day clock is reset for the receiving authority and will start the day after it receives the request from the original authority.

57. It is good practice for the original authority to facilitate the transfer as soon as practicable. However, if it has reasonable grounds to believe the requester would be likely to object to a transfer, it should not continue without obtaining his or her consent.

58. Further good practice advice on transferring a request can be found in Part III of the Section 45 Code of Practice.

## Extensions to consider the public interest test

59. Section 10(3) states:

> **10**—(3) If, and to the extent that—
>
> (a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or
>
> (b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,
>
> the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice

| |
|---|
| under section 17(1) must be given. |

60. Section 10(3) enables an authority to extend the 20 working day limit up to a 'reasonable' time in any case where;

    - it requires more time to determine whether or not the balance of the public interest lies in maintaining an exemption; **or**

    - it needs further time to consider whether it would be in the public interest to confirm or deny whether the information is held.

61. This extension will therefore only apply to requests where the authority considers a 'qualified exemption' (an exemption that is subject to a public interest test) to be engaged.

62. The Act does not define what might constitute a 'reasonable' extension of time. However, our view is that an authority should take no more than an additional 20 working days to consider the public interest, meaning that the total time spent dealing with the request should not exceed 40 working days.

63. As section 10(3) only permits extensions for further consideration of the public interest, the additional time cannot be used to determine whether the exemptions themselves are engaged.

64. This means that the authority should have identified the relevant exemptions, and satisfied itself that they are applicable, within the initial 20 working day time limit.

65. Any authority claiming an extension will still be obliged to issue a refusal notice explaining which exemption applies and why within 20 working days. This notice must explain that it requires more time to consider the public interest test, and provide an estimate of the date on which a final decision is likely to be made.

66. Once that final decision has been reached, the authority must either disclose the information to the requester or issue a second refusal notice explaining why it has found the public interest to be in favour maintaining the exemption.

## Variations to the time for compliance

67. Sections 10(4) and 10(5) give the Secretary of State the power to make regulations which extend the 20 working day time limit to a maximum of 60 working days. These regulations may prescribe different time limits in relation to different cases.

> **10**—(4) The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with, the regulations.
>
> **10**—(5) Regulations under subsection (4) may—
>
> (a) prescribe different days in relation to different cases, and
> (b) confer a discretion on the Commissioner.

68. The Freedom of Information (Time for Compliance with Request) Regulations introduced variations to the 20 working day limit for requests to schools; information contained in public records; requests to the armed forces; and information held outside the UK. (Statutory Instruments 2004 No.3364, 2009 No. 1369 and 2010 No. 2768).

69. Whilst some of these variations may be claimed without prior consultation with the Information Commissioner, others can only be applied at his discretion.

70. Authorities should take particular note that even where a variation is applicable, the section 10(1) duty to respond to the request promptly still applies.

**Variations which may be applied without permission from the Information Commissioner**

**(i) Requests to schools**

71. This variation applies to all schools covered by the Act, including maintained schools, academies, pupil referral units and state funded nurseries.

72. The Regulations state that the time for compliance will be whichever is the shorter period;

- 20 working days following the date of receipt, excluding any day which is not a school day (this effectively equates to a period of 20 school days); **or**

- 60 working days following the date of receipt.

73. A 'school' day will be any day on which there is a session and the pupils are in attendance.

74. 'Working days' exclude school holidays and 'inset' or training days where the pupils are not present.

75. The following example illustrates how this variation works in practice.

> **Example**
> A school receives a request on 20 July. The school is scheduled to close for the summer holidays on 24 July and will reopen on 10 September.
>
> When calculating the time for compliance, the school recognises that it will not have to count any of the days between 24 July and 10 September, as these are non-school days for the purposes of the Regulations.
>
> After taking this into account it determines that a period of 20 school days will elapse in early October.
>
> It then calculates the date on which 60 working days would elapse and discovers that this will fall in November.
>
> This means that, provided the school cannot respond more promptly, the time for compliance in this case will be 20 school days because this period will lapse before an interval of 60 working days has passed.

### (ii) Information contained in public records

76. A public authority may extend the time for compliance to 30 working days in any case where;

- The request is received by an appropriate records authority or a person at a place of deposit appointed under section 4(1) of the Public Records Act 1958; **and**

- it relates to information that may be contained in a public record and has not been designated as open information for the purposes of Section 66 of the FOIA.

77. This variation is designed to allow the records authority time to consult with the responsible or transferring authority who may need to consider whether any of the information is exempt.

**Variations requiring the Information Commissioner's prior consent**

78. The following variations can only be employed where;

- the public authority has, within 20 working days following the date of receipt of the request, applied to the Information Commissioner for an extension of time in which to comply; **and**

- the Information Commissioner has agreed to the extension.

**(i) Requests to the armed forces**

79. A public authority can ask the Information Commissioner for an extension if the request cannot be met without obtaining information (recorded or unrecorded) from any individual (whether or not they are a member of the armed forces), who is actively involved in an operation, or in preparation for an operation, of the armed forces.

**(ii) Information held outside the UK**

80. An authority may also request permission to apply an extension where it will be unable to respond within the standard 20 working day limit because it needs to obtain information held outside the UK in order to comply with the request.

81. Where the Information Commissioner has agreed to one of the variations above, the Regulations provide that he can extend the time for compliance to one he considers reasonable in all the circumstances, up to a maximum of 60 working days following the receipt of the request.

## Good practice

82. Authorities may wish to consider the following good practice advice to help them handle requests promptly and efficiently;

- It may be helpful to provide and publicise a separate e-mail address for FOI requests, although there will 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 emails and to provide alternative contact details.

- Where an alternative contact has been provided in an 'out of office message', that contact should advise the original recipient of the 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.

## More information

83. This guidance has been developed drawing on ICO experience. Because of this it may provide more detail on issues that are often referred to the Information Commissioner than on those we rarely see. The guidance will be reviewed and considered from time to time in line with new decisions of the Information Commissioner, Tribunals and courts.

84. It is a guide to our general recommended approach, although individual cases will always be decided on the basis of their particular circumstances.

85. If you need any more information about this or any other aspect of freedom of information, please contact us: see our website www.ico.org.uk.