

# The Freedom of Information Act 2000 – JISC Legal Essentials



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### 1. What are the Main Provisions of the Freedom of Information Act 2000 (FOIA)?

- The FOIA gives a right of access to information held by ‘public authorities’. Most UK colleges and universities are public authorities. Separate FOI legislation applies to Scottish institutions.
- There are also Environmental Information Regulations which give the right to obtain information about the environment held by public authorities, unless there are good reasons to keep it confidential. Further details are available on the Information Commissioner’s Office (ICO) website.
- The FOIA covers all records and information held by a public authority, whether digital or print, current or archived.
- Information may only be withheld where one of the Act’s exemptions applies.
- Some exemptions are absolute but for others a public interest test has to be applied.
- Public authorities must produce and maintain a Publication Scheme which details the types of information routinely provided to the public and how they may be accessed. It is likely to include things like documents defining the structure and organisation of the institution, its services and procedures, practices, and minutes of meetings.
- Publication Schemes must be approved by the Information Commissioner, and reviewed regularly. Further details on current procedures and timescales are available on the ICO website.
- Any member of the public, anywhere in the world (including the public authority’s own members of staff), has a right to ask for information which is not already available through a public authority’s publication scheme.
- The request for information must be made in permanent form, such as by email, letter, tape, or text message.

- A person requesting information need not indicate to the public authority that the request is a freedom of information request. It is thus sensible to treat all non-routine requests for information, except those identified as concerning the requestor's own personal data, as FOI requests. A public authority is not entitled to know why the information is being requested or to know the identity of the person requesting it.
- A request for access to information must usually be answered within 20 working days.
- The ICO is responsible for enforcing the FOIA.
- Failure to provide information requested may result in a case being brought before the Information Tribunal, or ultimately, before the High Court.

## **2. Other Outcomes of the Act**

- While there are exemptions to the requirement to disclose information, there is a presumption in favour of release. This means that public authorities must justify decisions not to disclose. Some of the exemptions are absolute which means that if a case is made out for their use there need be no further examination. However, some exemptions are qualified and have to be weighed against a public interest test, where the public authority is obliged to weigh the public interest in disclosure of the data against the public interest in it remaining undisclosed. Exemptions to disclosure include information containing personal data, information subject to a duty of confidentiality and information the release of which would prejudice legitimate commercial interests.
- The timeframe for dealing with an FOI request begins when the public authority receives the request, not when it is received by its designated FOI contact. It is important for public authorities to have processes in place to ensure requests reach designated FOI staff in a timely fashion.
- All records held by an institution are potentially now open to greater scrutiny by the public. This includes information held by departments and individual members of staff, archived and backed-up information. Research data can be subject to disclosure, unless an exemption applies, e.g. that the information is intended for future publication and there is no public interest in prior disclosure.

## **3. What do Colleges and Universities Need to Consider in Order to Comply with the Act?**

- Staff training (and refreshers) to ensure staff awareness of individual and institutional duties under the FOIA.
- Good practice in relation to records management, including compliance with the Codes of Practice introduced under the FOIA.
- Ongoing maintenance and review of publication schemes including compliance with ICO procedures and timescales for approval.
- Necessary procedures to deal with requests and review of decisions in respect to release of information.

**Sources of Information:**

- [www.jisclegal.ac.uk](http://www.jisclegal.ac.uk) - JISC Legal website for legal information and links to other relevant sources
- [www.ico.gov.uk](http://www.ico.gov.uk) - ICO website for decisions and guidance relating to Data Protection, Freedom of Information and Environmental Information Regulations
- [www.justice.gov.uk/](http://www.justice.gov.uk/) - Ministry of Justice website for information and guidance
- [www.jiscinfonet.ac.uk](http://www.jiscinfonet.ac.uk) - JISC infoNet website for information on records management including retention schedules

Betty Willder

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