



Police and Crime Commissioner for Cumbria

Freedom of Information Procedure

Document control

This procedure applies to all employees of the Office of the Police and Crime Commissioner for Cumbria.

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1 Introduction

- 1.1 The Freedom of Information Act (FOIA) gives any individual anywhere in the world the right to recorded information held by the local authorities and the police service, subject to the application of exemptions.
- 1.2 It is essential that staff when dealing with FOI requests do so in line with statutory legislation. This procedure is to support staff in that endeavour.

2 Requests for Information

- 2.1 The Act gives two related qualified rights:
 - The right to be told whether the recorded information is held (Section 1(1)(a)); and
 - The right to receive the recorded information (Section 1(1)(b)).
- 2.2 The Act gives the right to request information it does not provide an automatic right to ask for, or be provided with, copies of documents.
- 2.3 The Freedom of Information Act confers two responsibilities on public sector bodies:
 - The duty to confirm or deny whether the information requested exists; and
 - The Duty to communication the information.
- 2.4 Under Section 8 of the Freedom of Information Act, requests:
 - Must be made in writing;
 - Must clearly describe the information being sought;
 - Can be made from anywhere in the world;
 - Can be made by an individual or an organisation;
 - Can be made by letter, fax or email;
 - Must be legible; and
 - Must contain the name of the applicant and a return address (an email address is acceptable).
- 2.5 Twitter does not provide a suitable address for a full response, therefore a request made by this mode of social media will not be acceptable. Facebook may be used for requests although any correspondence with the requestor, other than the final response, may be put into the public domain.
- 2.6 The OPCC has a duty to provide assistance or advice to an applicant. If a request is unclear the OPCC may clarify with the applicant what it is they are requesting and take reasonable steps to provide assistance.

- 2.7 Where a request is received and the applicant is either anonymous or suspected to be using a pseudonym, there is no lawful requirement to deal with the request as the criteria under Section 8 is not met. However if there would be no harm in disclosing the information then the OPCC would be encouraged to do so.

3 Roles and Responsibilities

- 3.1 Compliance with the Freedom of Information Act will be managed by the OPCC's Governance and Business Services Manager.
- 3.2 Responses to requests will take due regard to the ACPO Manual of Guidance on the Freedom of Information Act and any other relevant legislation and guidance.
- 3.3 The Governance and Business Services Manager has full authority to consider and take decisions on the release of information.
- 3.4 The OPCC's Chief Executive/Monitoring Officer will deal with requests where appropriate or where requests have been escalated.

4 Vexatious Requests

- 4.1 Section 14(2) states that a public authority does not have to comply with vexatious requests, or repeated requests, for the same information from the same person. When identifying whether or not a request can be classed as vexatious, the following should be considered:
- Would complying with the request impose a significant burden;
 - Is it fair to regard the request as obsessive;
 - Is the request harassing the authority or causing distress to staff;
 - Is it designed to cause disruption or annoyance;
 - Does it lack any serious purpose or value.

5 Excess Costs

- 5.1 Section 12 FOIA provides the OPCC with an exemption from complying with a request for information. If to locate, retrieve and extract the information requested would take more than 18 hours this would exceed the appropriate time limit. The Fees Regulations state that this cost limit in the case of the police service is £450.
- 5.2 The regulations advise that costs are calculated at £25 per hour per person and therefore for the OPCC this would equate to 18 hours of work.
- 5.3 The OPCC must still confirm or deny whether it holds the information requested unless the cost of this alone would exceed the appropriate limit.

6 Processing an FOI Request

- 6.1 On the day the request is received, or the first day of work if it is received at a weekend, it should be acknowledged within 5 days of receipt and the requestor advised that they will receive a response within 20 working days.

6.2 The request is then logged eg: <G:\OPCC\Freedom of Information\2015 FOI Requests\2015 SPREADSHEET.xls> and all the relevant information logged including:

- Allocate next sequential number
- Name and address/email address of requestor
- Details of what they are requesting
- Deadline date = 20 working days from the day after the request is received (Saturdays and Sundays do not count).
- Create a new folder for each request. All information relating to an individual request should be filed within this folder. Including:
 - A copy of the request – either email or scanned copy.
 - Acknowledgement email/letter.
 - Any correspondence with the requestor, including the final response letter

6.3 Any correspondence with OPCC staff or Constabulary staff.

7 Information in the Public Domain

7.1 If the information requested is already in the public domain, such as on the Police & Crime Commissioner's website, the applicant should be advised accordingly and provided with either a link to the appropriate section on the website, or with paper copies.

8 Requesting information from OPCC Staff / Cumbria Constabulary

8.1 The Constabulary may hold the information requested on behalf of the OPCC, similarly a member of OPCC staff may hold the requested information and will therefore be required to provide the necessary information.

8.2 An email should be sent to the member of staff/Cumbria Constabulary advising them of what the request is and when the information should be provided. Pro-forma wording has been developed to assist with this. Complete the spreadsheet as to when and whom any requests have been made.

8.3 A person is guilty of an offence if they alter, deface, block, erase, destroy or conceal any record held by the organisation after a request for it has been received. This also includes exempting information which should not.

8.4 Upon receipt of the information it should be considered and a decision made as to whether the information will be disclosed or whether any exemptions should be applied to the whole or part of the information. The spreadsheet should be updated to reflect receipt of the information

9 Requests for Cumbria Constabulary to deal with

- 9.1 A request may be received where the Constabulary hold the information in their own right. They will therefore be the appropriate authority to respond to the request.
- 9.2 Advise the applicant that the OPCC does not hold the information requested. Provide them with the Constabulary's Disclosure Unit's contact details. You may wish to offer to forward the request to the Constabulary on behalf of the applicant.
- 9.3 An FOI request should only be transferred to the Constabulary if the applicant's permission has been sought and granted. If this is not received there is a risk of breaching Data Protection legislation due to transferring the applicant's personal information.

10 Applying Exemptions

- 10.1 The FOIA gives a general right of access to information to the public. However, the Act makes provision for withholding of information and offers 23 exemptions that may be applied to decline disclosure.
- 10.2 Upon receipt of the requested information it must be assessed as to whether all, part of, or none of the information requested is to be disclosed.

The applicant making the request should be informed of this and provided with an explanation as to why they cannot receive the information. The Association of Chief Police Officers (ACPO) have produced a manual of guidance which can assist with this process.
- 10.3 If the information is held and an exemption against release is to be utilised then a 'harm test' should be carried out to establish the harm (prejudice) that is likely to occur if the information was disclosed.
- 10.4 *"..... the chance of prejudice must be more than hypothetical or remote possibility; there must be a real or significant risk"* (Tribunal EA/2005/05); and *"..... prejudice must be real, actual and of substance"* (Tribunal EA/2005/0026). When considering harm consider the following categories:
 - Individual
 - Community
 - Service (the force and/or all forces)
 - Other bodies / stakeholders
- 10.5 Having completed the harm test, looking at reasons for disclosure and non-disclosure then the most important factor should be used for the final decision. Parts of documents may be disclosed following a harm test. If a person has a public facing role then they could be named within information released but this needs to be considered on a case by case basis.

10.6 Types of Exemption

- Absolute – cannot be overcome by a public interest test (PIT)
- Qualified – can be overcome by a public interest test (PIT)
- Class based – no evidence of harm needs to be provided
- Prejudice Based – evidence of harm must be provided

11 Support and Advice

- 11.1 Support and advice can be found on the College of Policing website in the Information Management Section on the Authorised Professional Practice platform.
- 11.2 The website is continually updated with information regarding dealing with freedom of information requests and any changes to legislation. It includes hyperlinks to relevant data and guidance.
- 11.3 In addition requests can be forwarded to the National Police Chief Council (NPCC) Central Referral Unit for advice on a request. The Unit will consider the request and provide advice on guidance on how to deal with the request.
- 11.4 On occasions the Central Referral Unit will email all OPCC offices where a number of forces or OPCC offices have received the same requests. They will provide advice and guidance on how to deal with the request.

12 Refusing Requests for Information

- 12.1 By not providing an applicant with information the OPCC will be denying someone their legal rights therefore it must be done in compliance with the law. When refusing a request you **must** state:
- That the request is being refused
 - Which exemptions are being applied
 - Why the exemption applies (S17(1)) unless to do so would release exempt information (S17(4))
- 12.2 The OPCC regularly publishes information on its website, eg its annual Statement of Accounts. Should a request be received which relates to information which is to be published in the future then the request may be denied. However the OPCC should provide a timescale to the applicant as to when they can expect the information to be available. The timescale must be a reasonable one, otherwise the information should be provided via the request received.

13 Neither Confirm nor Deny (NCND)

- 13.1 To comply with Section 1(1)(a) of the Act and confirming that the OPC holds the information may in itself disclose information that is exempt. Therefore in response the OPCC is entitled to say that it *“cannot confirm or deny that the information is held”*. However exemptions will still need to be considered and applied.

13.2 Example Response S17(a)

The Office of the Police and Crime Commissioner neither confirms nor denies that it holds any of the information requested. To give a statement of the reasons why neither confirming nor denying is appropriate in this case would itself involve the disclosure of exempt information, therefore under Section 17(4), no explanation can be given. To the extent that section [add in relevant section] applies the Office of the Police and Crime Commissioner has determined that in all the circumstances of the case the public interest in maintaining the exclusion of the duty to neither confirm nor deny outweighs the public interest in confirming whether or not information is held.

13.3 Example Response S17(1)

As above, but with an explanation of why the exemption is being applied.

14 Finalising a Request

- 14.1 When all the information has been gathered and any exemptions considered and applied the final response should be sent to the applicant. The response letter should include when the request was received, what information the applicant is requesting and responses to each of the questions asked. Copies of documents may be provided, however the applicant is only entitled to information not to actual documents. Therefore it is appropriate to provide information on a blank sheet, or redact information within a document when necessary. However if the majority of the information contained within a document is to be disclosed then consideration should be taken of simply disclosing the whole document.
- 14.2 The response should be provided to the applicant by the same method as the request as received, ie via email or post, unless otherwise stated by the applicant.
- 14.3 The spreadsheet should be updated to reflect when the response was sent, if any information was provided, where exemptions have been used, how many days it has taken to respond to the request and what the applicant has been provided with.

15 Rights of Complaint

- 15.1 When responding to a request appended to the response letter should be a sheet detailing the applicant's rights to appeal the decision.
- 15.2 Section 16 details how to deal with an appeal.

16 Publishing FOI Disclosure

- 16.1 On a monthly basis the OPCC will publish on its website all the FOI requests it has received and the responses provided. Included with the log will be any documents which have also been provided as part of the response.
- 16.2 The log is updated on a monthly basis up to an including the end of the calendar year.

17 Internal Review

- 17.1 If an applicant is unhappy with the response they have been provided with or feel that more information should have been disclosed they can request that the OPCC undertake an internal review.
- 17.2 Upon receipt of such a request the spreadsheet should be updated accordingly and a copy of the request placed in the original folder. Another member of staff should be appointed to undertake the review of the original request, the information provided and where any exemptions have been applied. This should not be undertaken by the person dealing with the original request. This review should be completed within 20 working days of receiving the complaint.
- 17.3 A decision will then be made to either uphold the original decision or provide further information to the applicant. The applicant should be advised accordingly and provided with a copy of their complaint rights. The spreadsheet should be updated as to the decision.

18 Appeal to the Information Commissioner's Office

- 18.1 A requestor may appeal the OPCC's decision to the Information Commissioner's Office (ICO) stating the grounds for their appeal. The ICO recommend that a requestor makes a complaint within two months of receiving an authority's response.
- 18.2 The ICO will then contact the OPCC to advise them of receipt of the appeal. The spreadsheet should be updated and a copy of any notification filed in the original folder.
- 18.3 The ICO will give a public authority one opportunity to justify its position before issuing a decision notice. Consideration should be given to the guide for public authorities on the ICO's website for more information about how to they handle complaints:
http://www.ico.org.uk/for_organisations/freedom_of_information/guide.aspx
- Where possible the ICO prefers complaints to be resolved by informal means and they will ask both parties to be open to compromise. It is the responsibility of the OPCC to satisfy the ICO that they have complied with the law. The ICO's website has guidance which should be referred to in order to check whether the original response to the information request was appropriate.
- 18.4 The OPCC must revise the request and consider whether the decision should be reversed or amended taking into account the passage of time. If the OPCC decides to release further information they should notify the complainant and the ICO. The complainant then has the right to accept or refuse the further information and may decide to continue with their complaint. The ICO will take a pragmatic approach to the further request from the complainant for information to be disclosed. Further discussions can then take place or the OPCC can ask the ICO to make a judgement and finalise the case.

19 Environmental Information Regulation

- 19.1 The Environmental Information Regulations 2004(EIR) give rights of public access to environmental information held by public authorities. Regulation 2 of the EIR provides the interpretation of terms in the EIR and in regulation 2(1) states: "*environmental information*" has the same meaning as in Article 2(1) of the Directive, namely any information in writing, visual, aural, electronic or any other material form on -
- a) The state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
 - b) Factors such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
 - c) Measures (including administrative measures) such as policies, legislation, plans, programmes, environmental agreements and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements

- d) Reports on the implementation of environmental legislation;
- e) Cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and

The state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures in as much as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c).

- 19.2 There are many similarities between the two regimes and any request for 'environmental information' must be answered in accordance with the EIR rather than the FOIA. It is possible that in some cases both regimes will be relevant. In these cases, it is essential to be clear which parts of the information fall under which regime so as to apply the correct exemption or exception of information has to be withheld.
- 19.3 Requests for information under the EIR do not need to be made in writing but can include telephone requests on environmental matters (although in practice it is advisable to make a written record of any verbal requests received).
- 19.4 Upon receipt of an EIR request this should be logged and a folder set up where all relevant information to the request should be filed.
- 19.5 Under FOIA there is a requirement to provide a substantive response to any request for information promptly and in any event within 20 working days. There is some scope to extend this timescale when a qualified exemption is being considered and it is necessary to assess the balance of public interest. The EIR also require requests to be answered within 20 working days but there is provision to extend the response time to 40 working days but only for complex and voluminous requests.

20 Register of Data Controllers

- 20.1 For the purposes of the Freedom of Information Act, the Police & Crime Commissioner is the Data Controller. The implications upon the OPCC from the FOIA have previously been covered earlier in this document.

21 Oversight and Scrutiny

- 21.1 The Ethics and Integrity Panel has responsibility to monitor and scrutinise the OPCC and Constabulary's compliance with the Freedom of Information Act.
- 21.2 As part of the Constabulary's Funding Agreement they are required to provide information on their compliance with the Act.