

Freedom of Information Act Awareness Guidance No 11

Time for Compliance

The Freedom of Information Act is expected to come fully into force in January 2005. The Act creates a right of access to official information and places a duty on public authorities to publish information in accordance with “publication schemes”.

The **Awareness Guidance** series is published by the Information Commissioner to assist public authorities and, in particular, staff who may not have access to specialist advice in thinking about some of its challenges. The aim is to introduce some of the key concepts in the Act and to suggest the approaches that may be taken in preparing for implementation. 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. [FOI Act, s10(1)]

The Access Code¹ gives further guidance to public authorities on the 20 working day time limit. Part IV, paragraph 17 of the Code states that:

‘Public authorities are required to comply with all requests for information promptly and they should not delay responding until the end of the 20 working day period under section 10(1) if the information could reasonably have been provided earlier.’

2. When does the 20 working day ‘clock’ start?

The 20 working day clock starts:

¹ Section 45 of the FOI Act requires the Secretary of State to issue a code of practice (known as the ‘Access Code’), which provides guidance to public authorities on their duties under Part I of the Act. The Code, which is available at www.dca.gov.uk/foi/codepafunc.htm, includes guidance on: providing advice and assistance to those requesting information; transferring requests; consulting 3rd parties before releasing information; and FOI and public sector contracts.

- 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.
[FOI Act 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 an addressee 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 s1(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 Access Code deals with the provision of advice and assistance where an authority is relying on s1(3). The following guidance is provided in paragraph 9:

‘Where the applicant does not describe the information sought in a way which would enable the public authority to identify or locate it, or the request is ambiguous, the authority should, as far as practicable, provide assistance to the applicant to enable him or her to describe more clearly the information requested 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' exemptions² 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)]

The Access Code provides further guidance to public authorities. Part IV, paragraph 18 of the Code states that:

'Public authorities should aim to make all decisions within 20 working days, including in cases where a public authority needs to consider where the public interest lies in respect of an application for exempt information. However, it is recognised there will be some instances where it will not be possible to deal with such an application within 20 working days. Although there is no statutory time limit on the length of time the authority may take to reach a decision where the public interest must be considered, it must, under section 17(2), give an estimate of the date by which it expects to reach such a decision.'

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'.

² A list of the absolute and qualified exemptions is included in chapter 3 of the Information Commissioner's paper 'The Freedom of Information Act 2000: An Introduction', available from our website.

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)]

Concerns have been expressed by schools in particular, that requests received during the summer holidays would not be dealt with within the current deadline. The Department for Constitutional Affairs (DCA), which is responsible for regulations under the Act, will place updated information on its website at www.dca.gov.uk.

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.

The Access Code states, in Part VI, paragraphs 28-29:

'Where a request or part of a request is transferred from one public authority to another, the receiving authority must comply with its obligations under Part I of the Act in the same way as it would for a request that is received direct from an applicant. The time for complying with such a request will be measured from the day that the receiving authority receives the request.

All transfers of requests should take place as soon as is practicable, and the applicant should be informed as soon as possible once this has been done.'

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 s10 of the Act. In the event of a complaint by an applicant that he/she had received a late response to a request, the Information Commissioner would record that fact in his Decision Notice, but there would be no practical consequence, as the information had been received in the meantime.

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The Information Commissioner will take into account all the circumstances of the case, when specifying in his Decision Notice³, what steps the authority should take in order to comply with s10.

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 Notice⁴.

³ Under s50 of the Act, where an applicant considers his/her request for information has not been dealt with in accordance with the Act, and he/she has exhausted any internal complaints procedure, the applicant can ask the IC for a formal 'Decision' on the matter. The public authority and the applicant will both have the right to appeal the Decision to the independent Information Tribunal.

⁴ S52 of the Act gives the Information Commissioner the power to serve an Enforcement Notice if he is satisfied that a public authority has failed to comply with any of the requirements of Part I of the Act. (Part I deals with the right to information, refusal of requests and publication schemes.)