

Freedom of Information and SGUL

Frequently Asked Questions (FAQs)

There are three pieces of legislation which give individuals or organisations the right to access information held by SGUL as a public authority.

- **Freedom of Information Act 2000 (FOIA)**
 Applies to all information held by public authorities in England Wales and Northern Ireland (separate legislation for Scotland). Authorities must publish as much as they can on their Publication Schemes and supply information to anyone who asks, subject to a wide range of exemptions.
- **Data Protection Act 1998**
 Applies only to information that counts as personal data, but application extends to anyone responsible for such information, whether a public authority, private sector or a private individual. Mainly a set of rules for handling personal data, but an individual has the right of access to information about him or herself.
- **Environmental Information Regulations 2004**
 Applies only to environmental information held by public authorities, but application is not limited to FOI authorities, other bodies such as private sector bodies which have public responsibilities in relation to the environment are also covered. Authorities must actively disseminate environmental information and make it available to anyone who asks, subject to exceptions (which are more limited than FOIA exemptions).

Other legislation will influence the way that SGUL responds to requests for information. For example although the Freedom of Information Act specifies that FOI requests should be received in writing, the Disability Discrimination Act 2010 will trigger an institutional response to any FOIA requests that are received verbally or in-person.

The following FAQs set down the key responsibilities of SGUL in relation to the Freedom of Information Act:

	Question:	Answer:	Section
1.	WHAT IS COVERED BY FOI ACT?	All recorded information held by or on behalf of SGUL; Information may be held by others or overseas.	[s.3]
2.	WHAT IS A VALID FOI REQUEST?	A request must: be in writing (includes electronic means such as fax or e-mail), in legible form; capable of subsequent reference; containing an address for correspondence and name of the applicant. Applicant does not have to mention the legislation	[s.8]
3.	TWO PARTS TO THE BASIC RIGHT OF ACCESS	SGUL must: (a) say whether it holds information requested (the duty to confirm or deny) and (b) communicate the information if held. These two duties are separate, and exemptions can apply to either, so that SGUL might have to confirm it has the information but apply an exemption to the duty to communicate it.	[s.1(1)]

	Question:	Answer:	Section
		Duty to advise and assist the applicant	
4.	WHAT IS THE TIMESCALE FOR A RESPONSE?	Request is received on the date of delivery (by hand, post, fax, e-mail); out of office replies on e-mail can mean request is not received. <u>Response should be made promptly and within 20 working days</u> 20 days starts the <i>day after the request is received</i> . Clock starts when a valid request has been received in any part of the organisation.	[s.10]
5.	WHO CAN MAKE A REQUEST?	Anyone, anywhere can make a request; Any information can be requested SGUL has a duty to provide advice and assistance to requester, or intending requester Further issues include the language capability of requester, disability of requester, children can make requests subject to competence tests. Wide range of exemptions can apply Dealing with requests from journalists and pressure groups – same entitlement, no special rules (unless aggregation of costs applies to a ‘campaign’)	[ss.1,16,14]
6.	COSTS	<i>Information</i> must be provided free of charge BECAUSE the only fee that can be charged to the applicant is for <i>communication</i> costs (p&p, plus costs of meeting the applicant’s communication preference, photocopies 10p a sheet; staff time NOT included) Any communication cost fee must be the subject of a Fees Notice served on the applicant Usually not charged as not worth collecting Costs exemptions exist.	[ss.9,10] [Fees Regs]
7.	COSTS EXEMPTION	SGUL need not respond to a request if it costs too much Fees Regulations prescribe ‘appropriate limit’ - £600 for universities Only prescribed activities in relation to the information can be taken into account in calculating the appropriate limit: <i>Determining whether it is held</i> <i>Locating</i> <i>Retrieving</i> <i>Redacting</i> Staff time chargeable at £25 per hour Duty to advise & assist the applicant (e.g. inform the requester so that it comes under the limit) No exemption from duty to confirm or deny unless determination alone would exceed the appropriate limit Claiming this exemption requires formal refusal notice under s.17	[ss.12,16,17, Fees Regs]
8.	REPEAT AND VEXATIOUS REQUESTS	If an authority has previously complied with a request it does not have to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed; SGUL is not obliged to comply with a request if the request is vexatious.	[s.14]
9.	CONSEQUENCES OF FAILURE TO COMPLY WITH PART 1 FOIA	Complaint to SGUL; internal review Appeal to ICO; decision notice Information Notice or Enforcement Notice; Tribunal decision Practice Recommendation if s.45 Code not adhered to Adverse publicity Political repercussions – Councillors and MPs taking action	Part 1 [s.45]
10.	SUPPORTING	SGUL is under a duty to provide advice and assistance to	[s.45]

	Question:	Answer:	Section
	THE RIGHT OF ACCESS CODE OF PRACTICE – S45 FOIA BEST PRACTICE	<p>persons who propose to make requests, or who have made requests for access to information.</p> <p>The Code of Practice addresses:</p> <ul style="list-style-type: none"> • Methods for providing assistance and advice • Procedures for the transfer of requests to another public authority • Desirability of consultation with persons affected by an FOI request. • Type of confidentiality contract clauses appropriate for use by public bodies in commercial contracts • Desirability operation of complaints procedures 	
11.	REFUSAL NOTICE	<p>Once a valid request is received, SGUL must either say that it does not hold the information, or respond fully, or apply one or more exemptions to one or other of its 2 duties under s.1(1)</p> <p>If SGUL is not going to say whether it holds the information, or if held, is not going to supply it, then it must serve a formal Refusal Notice under s.17</p>	[s.17]
12.	PUBLICATION SCHEME	<p>ICO says: <i>“The purpose of a scheme is to ensure a significant amount of information is available without the need for a specific request. Schemes are intended to encourage organisations to publish more information pro-actively and to develop a greater culture of openness”</i></p> <p>ICO can review or revoke existing publication schemes.</p> <p>New sector-specific model schemes were produced by ICO 1 January 2009, and the SGUL publication scheme was revised at this time.</p> <p>Publicity about the publication scheme is the responsibility of SGUL.</p>	
13.	WHY ARE THERE EXEMPTIONS?	<p>To protect particular interests. e.g. national security, law enforcement, public safety; 3rd party privacy, etc</p> <p>Information available by other routes, e.g. publication schemes, EIRS, DPA, public registers;</p> <p>Access to information is prohibited; e.g. by statute, contempt of court;</p> <p>To limit the burden on public authorities, e.g. too costly; vexatious requests.</p>	
14.	PUBLIC INTEREST TEST	<p>FOIA says <i>“In all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information”</i></p> <p>There is a presumption that the public interest favours disclosure</p>	
15.	<u>PUBLIC INTEREST ISSUES NOT RELEVANT TO THE QUESTION OF DISCLOSURE</u>	<ul style="list-style-type: none"> • Embarrassment to SGUL/employee; • The applicant may misunderstand the information; • incomplete information; • Loss of confidence in SGUL 	
16.	EXEMPTIONS IN FOIA WHICH ARISE BECAUSE THERE ARE OTHER ACCESS ROUTES	<p>Environmental information (subject to Environmental Information Regulations);</p> <p>Personal data where the applicant is the data subject (Data Protection Act route)</p> <p>Information accessible by other specific legislation – planning, public registers, etc</p> <p>Information in the SGUL Publication Scheme</p> <p>General provision of information to the public – leaflets, one-stop shops, specific requests</p>	
17.	ACCESS TO PERSONAL DATA	<p>Personal data of the applicant is exempt under FOIA and a Subject Access Request (SAR) under the Data Protection Act</p>	

	Question:	Answer:	Section
	OF THE APPLICANT	(DPA) should be made by the applicant	
18.	OFFENCE	Where a request has been made and the information would be communicable under the Act it is an offence for any person to take any action with the intention of preventing disclosure; applies to SGUL and the individual employee. Can be committed by suppliers. Also applies to Subject Access Requests under the DPA made to SGUL. Can be prosecuted by ICO	[s.77]
19.	ROLE OF INFORMATION COMMISSIONER	Combined role with DPA enforcement; ICO promotes observance of FOIA by all public authorities; Publication Scheme: <ul style="list-style-type: none"> • ICO can approve/reject publication schemes • ICO produces model publication schemes; Practice Recommendation (when ICO decides that SGUL is not meeting the requirements of Code of Practice) ICO deals with complainants about the operation of FOIA/DPA; Information Notice – to obtain specific information about a request or about anything which relates to the operation of FOIA or to assess good practice. Decision Notice – specific to a complaint about how a request was handled (e.g. upholding or overturning a refusal); Enforcement Notice – general matters (e.g. procedures); failure to follow a practice recommendation could lead to enforcement notice Not an offence to ignore a Notice, but ICO can approach a Court saying that SGUL should be treated as being in contempt of Court; Power of entry possible by applying to a judge for a warrant Prosecution of those who frustrate FOI requests by tampering with the information which has been requested; Annual report to Parliament	[ss.47 – 56; ss19 &20]
20.	WHO CAN APPEAL TO THE INFORMATION TRIBUNAL?	Against a Decision Notice - the complainant or SGUL; Against an Information Notice - SGUL; Against an Enforcement Notice – SGUL Information Tribunal reviews everything and can overrule the ICO.	
21.	ENFORCEMENT (EXCEPTION)	A Decision or Enforcement Notice of ICO can be overruled by an “accountable person”. First Ministers are accountable persons as are all Secretaries of State. First certificate was issued February 2009 by Jack Straw in relation to disclosure of cabinet minutes about Iraq war.	[s.53]

Please direct any queries about Freedom of Information and SGUL to Sheila Durkin, Governance Manager (and Freedom of Information Officer) sdurkin@sgul.ac.uk or telephone 020 8725 4698.

SD 22 August 2013

The Information Commissioner has produced a Guide to Freedom of Information which is available on the iCO website http://www.ico.org.uk/for_organisations/freedom_of_information/guide or on the SGUL portal <https://portal.sgul.ac.uk/org/lis/governance-legal-assurance-services/freedom-of-information/edit>