Freedom of Information FAQs

Public authorities have been processing Freedom of Information (FOI) requests for eighteen years since the introduction of the FOI Act in 2000. However, there is still a lot of misunderstanding about what information can and cannot be disclosed under FOI rules. In this article our information governance team explains what should be provided upon request and what can actually be withheld.

What is an FOI request and who can make a request?

An FOI request is a request for recorded information and it can be made by any individual so long as the applicant has provided their name, a valid correspondence address, and enough information for an organisation to be able to understand their request.

The majority of all Public Authorities and certain publicly funded private companies may receive FOI requests. All FOI requests must be made in writing but can be submitted to any employee of that organisation.

Veritau Top Tip: *Make sure all of your employees recognise what a FOI request is and what to do if they receive one. Remember – you could also receive a request over social media.*

How long does an organisation have to answer an FOI request?

Generally an organisation has 20 working days to respond to a FOI request - however the clock will restart should you need to ask the applicant for clarification (and then restarts upon receipt of the clarification).

Veritau Top Tip: *To keep track with your FOIs it is recommended that you maintain a tracking spreadsheet.*

Does an organisation have to give all information upon request?

Not necessarily. Some information may attract an exemption which means an organisation could withhold the information. It is important to note that exemptions apply to the information not the request or the requestor – for example if you have an applicant that requests two documents the organisation would have to consider each document individually.

The following exemptions may apply to information:

Section	Exemption	Absolute or Qualified Exemption?
21	Information already reasonably accessible (even if a small cost is required)	Absolute
22	Information intended for future publication	Qualified
23	Information supplied by or relating to security bodies (i.e intelligence services)	Absolute

Section	Exemption	Absolute or Qualified Exemption?
24	Information relating to National Security (only applicable with issue of certificate from an authorised person)	Qualified
25	N/A – Relates to above exemption	N/A
26	Disclosure would likely prejudice: Defence	Qualified
27	Disclosure would likely prejudice: International Relations	Qualified
28	Disclosure would likely prejudice: UK Relations (i.e between UK government and devolved governments)	Qualified
29	Disclosure would likely prejudice: The Economy	Qualified
30	Information relating to (criminal) investigations	Qualified
31	Disclosure would likely prejudice: Law Enforcement	Qualified
32	Court Records	Absolute
33	Disclosure would likely prejudice: National Audit Functions	Qualified
34	Information which attracts Parliamentary Privilege	Absolute
35	Disclosure would likely prejudice: Government Policy	Qualified
36	Disclosure would likely prejudice: The conduct of public affairs (only applicable with issue of certificate from an authorised person)	Qualified (Usually)
37	Communications with the Royal Family	Monarch, Heir, and 2nd in line – Absolute Other members – Qualified
38	Disclosure would endanger Health and Safety	Qualified
39	Environmental Information (Should be dealt with under EIR)	Qualified
40	Personal Information (Should be dealt with under SAR)	Absolute
41	Information Provided in Confidence	Absolute
42	Legal Professional Privilege (Advice and Litigation)	Qualified
43	Trade Secrets or Disclosure would Prejudice Commercial interests of the responding organisation or another organisation	Qualified
44	Prohibitions on disclosure (i.e legislation stipulates information not to be published)	Absolute

What is a 'Qualified Exemption' and what is an 'Absolute Exemption'?

An absolute exemption is where an organisation does not need to justify why it is withholding information. For example if the information is all about an individual then

this would be absolutely exempt and not disclosed under the FOI Act (instead you would consider this as a Subject Access Request).

A qualified exemption is where an organisation has to complete a 'Public Interest Test' prior to withholding the information. The Public Interest Test needs to consider whether there is greater public interest in disclosure of the information against the public interest in applying the exemption.

Veritau Top Tip: *Seek advice from your Information Governance Officer if you think an exemption applies to requested information.*

Does an organisation have to give all information if the request is considered vexatious or repetitive?

Although FOIs should be considered applicant and motive blind (i.e you cannot discriminate against an applicant because of who they are or what their motives are) there are some occasions when an organisation can decide that a request is vexatious (under Section 14 of the FOI Act). This might be because the requestor is using the FOI process to reopen a closed complaint, the requestor has used threatening or abusive language in their request, or because the request is likely to cause disproportionate distress, disruption, or irritation.

If you receive a request that is identical, or substantially similar, to a previous request from the same individual, or individuals working together, then you can reject a request on these grounds unless a reasonable interval has passed.

Veritau Top Tip: *Requests should only be treated as vexatious in the most extreme cases. Likewise, only a request can be treated as vexatious (the requestor cannot be vexatious).*

Can an organisation refuse a request because it will take too long to respond to?

Sometimes a request will be so large in scope that it will take an organisation a significant amount of time to gather the requested information. However, an organisation can only refuse a request if gathering the information would take in excess of **eighteen hours**. This does not include redaction time.

Veritau Top Tip: *When refusing a request on the basis of time, you should offer the applicant a chance to refine their request so that it can be answered within eighteen hours.*

What is an EIR Request?

The Environmental Information Regulations (EIR) are similar in nature to the FOI Act. It allows members of the public to access environmental information from a range of organisations. An example would be a request about emissions data. EIR has similar exemptions and timescales to FOI.

Veritau Top Tip: *If you have a request for environmental information ensure that you are aware of the responsibilities and exemptions that EIR allows. You may have to disclose information that would be exempt under FOI.*