



OPENNESS AND ACCOUNTABILITY

ALMO COMPLIANCE WITH THE FREEDOM OF INFORMATION ACT

Introduction

The General Right of Access under the Freedom of Information Act 2000 (FOIA) comes into force from 1 January 2005. From that date, anyone, anywhere in the world, will have a legal right to request any information that a public body¹, holds, subject to certain exemptions. The body must respond and provide the information, or explain why it is considered exempt, within 20 working days.

By virtue of Section 6 of the Act an ALMO is classed as a public body because it is a company wholly owned by a local authority. As an ALMO is a public body for the purposes of the Act the ALMO needs to have its own publication scheme rather than sheltering under the local authority's.

This briefing provides an explanation of what is required, suggestions about how an ALMO could most readily comply, and some sources of further information.

What is the Freedom of Information Act about?

The FOIA applies to all information handled by public bodies, and is intended to make government more accountable and to enhance public participation in the democratic decision-making process.

The FOIA is closely linked to the Data Protection Act 1998 (DPA), which has already been in operation for several years. The DPA concentrates specifically on personal information held by organisations about individuals.

The Information Commissioner is appointed by government to monitor the way in which public bodies comply with the FOIA and DPA. His role is to promote public access to official information and protect individuals' personal information.

As public bodies, ALMOs must comply with both statutes. They have a significant effect on the way in which organisations handle information at work.

¹ The Information Commissioner's office has confirmed that the FOIA requirements apply to wholly publicly owned companies. Solicitors Trowers and Hamblins have advised the NFA that in their view the Act definitely applies to ALMOs.



What does the term “information” cover?

“Information” means anything “recorded” by the ALMO – anything it writes, stores, processes or publishes, including reports, letters, faxes, emails and handwritten notes. However, “information” is not synonymous with “documents” – the ALMO must provide the information requested rather than the documents themselves, and the information requested may well not be included in one specific document but instead be spread across parts of a number of documents.

The FOIA is fully retrospective. The Act will allow access to information held by public bodies regardless of when that information was created or how long it has been held by the public body.

Subject to the exemptions described below, the public body’s response to requests for information must disclose whether or not it holds the information sought, and if so it must provide the information.

Does the ALMO have to provide everything people request?

The emphasis of the FOIA is on disclosing as much information as possible. However:

- There are a number of absolute exemptions which must be applied to certain categories of information, such as:
 - Certain information relating to national security, information that would prejudice international relations, commercially sensitive information, information subject to parliamentary or Court privilege, information which is subject to a duty of confidence
 - Environmental information which can be accessed through the Environmental Information Regulations
 - An applicant wishing to access information about themselves should use their rights under the DPA rather than FOIA
 - Personal data about other people, release of which would breach the Data Protection Act.

- There are also exemptions which may be applied if the ALMO considers that the public interest in not disclosing the information outweighs the public interest in disclosing it.

Where an exemption applies the ALMO does not have to communicate the information and, in some cases, does not even need to disclose whether or not it holds the information requested.



What are the routes to accessing information?

Members of the public can obtain information from a public body either:

- Via an approved publication scheme
- If the information is not included in the publication scheme, make a separate request from 1 January 2005 when the General Right comes into force.

If applicants are not happy with the response they receive they must first complain to the ALMO. If they are still unhappy they may complain to the Information Commissioner who will decide whether the request has been handled properly. Both the applicant and the ALMO are informed of the Commissioner's decision in a Decision Notice. Where appropriate the Decision Notice will instruct the ALMO as to the steps it needs to take to comply with the Act; this may include the release of information. Both the applicant and the ALMO may appeal against a Decision Notice to the Information Tribunal.

The Commissioner can also issue a public body with an Enforcement Notice stating what steps it should take to comply with the Act. Although it is similar to a Decision Notice in some respects, the Commissioner does not need to wait to respond to a complaint from an applicant that a request has been incorrectly handled before taking this form of enforcement action. Only the public body may appeal to the Information Tribunal against such a notice.

Publication schemes

If the information requested is already published by the ALMO under its publication scheme (which must have been approved by the Information Commissioner) the ALMO's response can simply be to direct the applicant to the published information as set out in the scheme.

One of the obligations of the FOIA is for all public bodies to prepare a publication scheme. The purpose of a scheme is to ensure that much of the body's information is already publicly available, without the need for a specific request. Schemes are intended to encourage organisations to publish more information proactively and to develop a greater culture of openness.

As an ALMO is a separate public body for the purposes of the Act it must produce its own publication scheme. Whilst it is certainly true that an ALMO cannot shelter under the local authority's scheme, it might be appropriate for an ALMO to adopt, as its own, the council's publication scheme. That would depend on whether the local authority's scheme would apply, without amendment, to the ALMO. It is likely that the council's scheme would have various classes of information which would not be relevant to an ALMO and



any scheme, if adopted by the ALMO would need some amendment (and a separate Information Commissioner approval).

Publication schemes are like a library index. A publication scheme is a guide to the types of information that the ALMO routinely publishes, the format in which the information is available in and how much it will cost if there are any charges. The information is presented in the form of classes (categories) of information. The publication scheme must itself be published by the ALMO.

A person can contact the ALMO in any way, such as telephone, email, fax or in writing and ask to see the publication scheme. They can then make a request for any of the information included within the scheme.

A good, comprehensive publication scheme is therefore a real asset to an ALMO as it streamlines provision of information and cuts down the amount of information that will have to be provided in a bespoke form in response to requests for information not included in the scheme.

Typical contents of a scheme include:

- The role of the body, its aims and values
- Governance and structure
- Information about the FOIA and the publication scheme
- Exemptions
- Charging policy
- Copyright
- Procedure for accessing information
- Rights of review, formal complaint and appeal
- Review by the Information Commissioner
- The sections and classes of information included in the scheme
- Office details and contact addresses.

The “sections and classes” section is the library index. Some public bodies simply publish on their website high level schemes describing in an unspecific way the standard information which is available on request, while others have produced more sophisticated schemes which include hyperlinks to the underlying documents themselves, thereby hoping to reduce the need to process information requests manually. Cross references to examples of publication schemes of each type which are available on the web are included in the Sources of Further Information section at the end of this paper.

There are statutory requirements as to the format and content of a publication scheme. The Information Commissioner has published guidance on and a methodology for publication schemes. This is free to download from his website.



How do people request information from the ALMO?

People wanting information not included in the publication scheme must request it in writing – by letter, fax or email. They must include their name and address, and describe the information they want. They do not have to refer to the FOIA. They do not have to say why they want the information.

Public bodies have a duty to provide assistance to people who have made or who are thinking of making a request. This will help applicants understand their rights under the Act and identify the information they want.

The applicant can either ask for a copy of the information they seek, the chance to inspect the records, or even to be provided with a summary of the information. The ALMO should try to provide the information in the form requested unless it is unreasonable to do so.

If any of the information requested is exempt the applicant should be told which of the exemptions has been relied on to withhold the information

Public bodies are allowed to charge a fee for responding to requests. The amount that can be charged is set out in regulations. If a public body wishes to charge a fee it must inform the applicant in writing. The 20 days for responding to requests is put on hold until the fee is paid. If the fee is not paid within 3 months it is assumed the applicant no longer wants the information.

How should we deal with requests?

Requests for information could be addressed to anyone in the organisation – including front line staff, not just the top of the office. So everyone needs to know how to recognise a FOIA request.

Well prepared organisations have already briefed their staff. The normal approach seems to be:

- For information the organisation has already published or provided in the normal course of business in the past, advise staff to just continue doing as they always have
- For information that would not previously have been released, to set up a central, expert, point to which all requests are forwarded.

For requests in the latter category, the choice is either for the central, expert point to offer advice on handling; or for it to respond to the request itself, at least for an initial period until experience and case law has built up. Either way, it is imperative that requests are referred to the central point immediately on receipt as the 20-day clock for responses is ticking.



What does this mean for records management?

The concept of information is wide ranging as it includes any information which is in a recorded form. There is no need for an applicant to request sight of a specific document and, as a result, the scope of the ALMO's search for information may need to be extensive. If an ALMO does not have good records management policies and procedures in place it will find it difficult to comply with its obligations under the Act.

The FOIA applies both to paper and electronic records, including emails. All of the ALMO's records and files must always be kept in a professional manner – this should be (but isn't always!) common practice in an organisation's day-to-day work, but it becomes even more important within the context of FOIA. To comply with the Act's requirements, ALMOs need to be able to find documents and information quickly. This puts a premium on effective management of both paper and electronic records, and on scrupulous use of well-designed filing systems.

The sorts of advice organisations have issued to their staff include:

- Disposing as soon as practicable with ephemeral information or that needed only for short term use – such as most emails
- Wherever possible (i.e. except where audit trails are required), saving only final versions of documents – it is these, not earlier drafts, which are the ALMO's official record
- Deleting or destroying duplicates from any other files or electronic folders, including email folders, unless there is a business need to retain them
- Thinking about the information held with a view to proactively publishing more via the publication scheme.

Some organisations are conducting an audit of the information they hold, so that they have a good idea of what they have and where to find it.

What does this mean for how and what we write?

Anything written in the past, currently, or in the future - as a personal aide memoire, with a view to sharing with colleagues, or putting on record - may be disclosed in response to a FOIA (or DPA) request. There is no exemption for embarrassment!

So inappropriate comments should not be annotated onto documents in files, and the tone and content of emails should remain professional at all times.

There will be many instances where staff need to record information related to individuals or other organisations – both elsewhere in the ALMO, or external -



in the course of their work. This is legitimate, provided the information is treated with proper respect.

The best way to do this is for staff to treat information about other people and organisations in the same way they would expect information about themselves to be treated. This includes respecting confidentiality, not passing on personal information unless there is a business need, and not writing disparaging or personal comments about individuals or organisations in files or emails.

It will also be helpful in complying with FOIA requests:

- To present information in documents with supporting evidence where practicable, avoiding relying on unsubstantiated assumptions, hearsay or received wisdom about a particular course of action, organisation or individual
- To separate out in documents factual/statistical information, from commentary/analysis where possible
- To be clear, concise and factually correct to avoid ambiguity.

Sources of further information

The Information Commissioner
Wycliffe House
Water Lane
WILMSLOW
Cheshire SK9 5AF
Tel: 01625 545 700
Fax: 01625 524 510
Website: www.informationcommissioner.gov.uk

Two codes of practice have been published by the Information Commissioner, intended to be of help to public bodies in meeting their responsibilities.

The first code, produced under section 45 of the Act, is sometimes referred to as the Access Code. It deals with how to handle requests for information including:

- The level of advice and assistance expected
- Transferring requests from one public body to another (this may be particularly relevant to ALMOs, which might get requests which are more appropriately handled by the local authority)
- Consulting with third parties who may be affected by the release of information.

It also deals with complaints procedures and how the Act impacts on public sector contracts.



The second code is made under section 46 of the Act and deals with records management.

An example of a simple publication scheme is Ashfield Homes':
www.ashfieldhomes.co.uk/publications/publication_scheme2004.pdf

A more sophisticated scheme which includes hyperlinks to the specific information referred to within it is the Housing Corporation's:
www.housingcorp.gov.uk/resources/foi.htm

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