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## THE FOI CODES OF PRACTICE

The Freedom of Information Act received Royal Assent on 30th November 2000. Regular readers will be aware of my article on the Bill when it was making its way through the House of Lords (see SJ 28<sup>th</sup> July 2000 pg702) It sets out in detailed provisions of the legislation. Some amendments have been made since. These can be found at [www.cfoi.org.uk](http://www.cfoi.org.uk). Briefly the Freedom of Information Act 2000 will introduce:

- A general right of access to recorded information held by public authorities in the course of carrying out their public functions, subject to certain conditions and exemptions;
- A duty to disclose exempted information - in most cases - where it is in the public interest to do so;
- A new office of Information Commissioner, Elisabeth France, which will combine responsibility for data protection and freedom of information;
- A new Information Tribunal with wide powers to enforce the rights created; and
- Publication schemes - each public authority will have to adopt a scheme for the publication of information. These must be approved by the Commissioner, will specify the classes of information the authority intends to publish, the manner of publication and whether the information is available to the public free of charge.

The full text of the Act can be found on Her Majesty's Stationary Office website ([www.hmsso.gov.uk](http://www.hmsso.gov.uk)) and useful background is available at [www.homeoffice.gov.uk/foi](http://www.homeoffice.gov.uk/foi).

Once fully in force the Act will have a massive impact. Organisations and individuals will be able to request all sorts of information which was previously denied to them or which they never previously thought of asking for. According to Home Secretary, Jack Straw:

“For the first time people will have a statutory right of access to information held by fifty thousand public authorities.”

So what can public authorities do to prepare for the Act. The first thing not to do is panic. The Act will have a sectorial approach so that different public areas will be phased in at different times over five years. We are still waiting for regulations setting out the exact timetable. In the meantime public authorities can take the following steps:

The first thing to do is to change the culture of the organisation in the way that it stores and records information. The message needs to permeate

throughout the organisation that secrecy is out transparency is in. Briefing sessions, leaflets and use of the intranet will all help to spread the freedom of information message. Once this message gets through then employees of public authorities will be much more careful about handling and recording information.

Any freedom of information legislation is only as good as the quality of the records to which it provides access. Such rights are of little use if reliable records are not created in the first place, if they cannot be found when needed or if the arrangements for their eventual archiving or destruction are inadequate. This is where the Lord Chancellors draft code of practice on records management comes in (see [www.pro.gov.uk](http://www.pro.gov.uk) under records management.)

The Code is supplemental to the provisions in the Act. It sets out the kind of measures which need to be taken to assist in compliance with the Act. If it appears to the Information Commissioner that an authority is not complying with the Code and this is leading to non compliance with the Act, she may issue a practice recommendation under Section 47 of the Act specifying steps which should be taken.

All public authorities need to examine the draft Code. The main recommendations are as follows:

- The records management function should be recognised as a specific corporate programme within an authority and should receive the necessary levels of organisational support to ensure effectiveness. It should bring together responsibilities for records in all formats, including electronic records, throughout their life cycle, from planning and creation through to ultimate disposal.
- An authority should have in place an overall policy statement, endorsed by top management and made readily available to staff at all levels of the organisation, on how it manages its records, including electronic records and indicate the way in which compliance with the policy will be monitored.
- A designated member of staff of appropriate seniority should have lead responsibility for records management within the authority. This lead role should be formally acknowledged and made known throughout the authority.
- Training should be given to all new staff on awareness of records issues and practices.
- A tracking system should be used to control the movement and location of records. This should be sufficient to ensure that a record can be easily retrieved at any time, that any outstanding issues can be dealt with, and that there is an auditable trail of record transactions.

- Storage accommodation for current records must be clean and tidy, and safe from unauthorised access, damage or destruction. It should allow maximum accessibility to the information commensurate with its frequency of use.
- A contingency or business recovery plan should be in place to provide protection for records which are vital to the continued functioning of the authority.
- It is particularly important under FOI that the disposal of records - which is here defined as the point in their lifecycle when they are either transferred to an archives or destroyed - is undertaken in accordance with clearly established policies which have been formally adopted by authorities and which are enforced by properly authorised staff.

Under Part III of the Act the Secretary of State has issued a draft code of practice (available [www.homeoffice.gov.uk/foi](http://www.homeoffice.gov.uk/foi)) providing guidance to public authorities on dealing with requests for information and publication schemes. Amongst other things, it gives guidance on the internal complaints system which every public authority is encouraged to set up to ensure complaints about information access are dealt with properly. Public authority managers need to network with each other with a view to formulating best practice. They may also wish to write common publication schemes e.g. on the kind of benefits or revenues information they will publish as an authority. This may also include information about the time it takes to deal with applications, the number of application they receive, the factors they would take into account when exercising any discretion etc.

The Freedom of Information Act is going to mean a sea change in the amount of information which is going to be publicly available. In an age when information is power FOI aims to redistribute this power to the people. It will mean yet more work for stretched public authorities who would be wise to think about the practical and resource implications now before the Act comes fully into force.

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