

THEIR RIGHT TO KNOW

By Ibrahim Hasan and Paul Simpkins

More than six years after the Freedom of Information Act 2000 (FOI) came into force it is having a big impact on the way the public access information held by local authorities. Journalists, members of the public and even politicians are making FOI requests which challenge Town Hall officials to produce, amongst other things, minutes of meetings, contracts, tenders and internal correspondence.

The Act does exactly what it says on the tin! Anyone can exercise a legal right to ask for any recorded information held by any public authority. It does not just cover central government and local authorities. The fire brigade, hospitals, schools, the police and even doctors' and dentists' surgeries are included. Applicants can peer into official files and ask for copies of documents to check whether a public authority is doing its job properly and to get the answers to burning questions such as:

- Why did you build that roundabout there?
- Why am I waiting so long for my appointment?
- How much did you spend on that service/those goods?
- Why has my application been turned down?

Members of the public who want to know why they are not getting the service they expect are able to see the paperwork or even e mails for themselves. There is no complicated form to fill out and no need to mention Freedom of Information. Anyone who wishes to exercise their right under the Act has to make their request in writing, giving their name and address. That's all they have to do. Motive or reason for asking is irrelevant. Indeed a public authority cannot ask why an applicant wants the information or what he/she is going to do with it.

Once a request is received, the public authority has twenty working days to respond. It may either supply a copy of the information or allow the applicant to inspect the documents. There are some exemptions to this right of access e.g. where disclosure would prejudice crime prevention, health and safety or someone's commercial interests. However, most of these exemptions are subject to the Public Interest Test. This means that, even if the information is exempt, the public authority has to consider whether the public's right to know the information is more important.

So what does it cost to ask for information under the Act? Public authorities, in the majority of cases, are only able to charge for photocopying, printing and postage costs. The staff costs of finding the information are not chargeable. Anyone who is refused information under the Act can complain to the public authority. If they remain dissatisfied they can take

their complaint further to the Information Commissioner, who is in charge of enforcing the Act.

What are the implications of FOI for elected members? They are not public authorities under the Act so the information they hold is not normally subject to disclosure. However the public are not always aware of this distinction. It is likely therefore that a member might receive an FOI request from someone who thinks they are effectively the local authority. In this instance the request should be passed on to the council FOI officer to handle.

Members of course need to ensure that their authority complies with the Act. The Information Commissioner has tough powers to force disclosure of information. Further details are available on his website (www.ico.gov.uk). Recently he has started naming and shaming public authorities who regularly go over twenty days when responding to requests.

The Data Protection Act (DPA) also has an impact on elected members. It applies to all personal information being processed by anyone (including individuals). The DPA is also enforced by the Information Commissioner who has much tougher powers in this area including the power to impose a direct fine of up to £500,000. Recently he fined Hertfordshire County Council £100,000, when sensitive child protection information was faxed to the wrong place. Information security and access is a big aspect of Data Protection compliance.

There are some other legal obligations which members must be aware of. Firstly if they run a surgery and advise constituents and record personal data about those cases they should notify the regulator (the Information Commissioner) that they are a Data Controller. This is a small piece of form filling and the Council's Committee Services section or Data Protection Officer will be able to advise. It does however cost £35 a year and it is a criminal offence not to do so.

As a consequence of being a Data Controller and handling personal information members may have to respond to individuals who exercise their rights under the DPA. There are several rights but the most common one is the right of access. If an individual thinks that a Data Controller holds personal data about them, he/she can ask for a copy of that information. It's generally known as a subject access request and there is a deadline for responding (40 calendar days). If an individual approaches a member and asks anything else about Data Protection and mentions their rights it is wise to take advice from the Council before responding. The DPA only allows personal data to be disclosed to the subject normally. Therefore if members need to ask questions of Council officers to progress a constituent's case it is wise to obtain a written consent from the constituent to allow the information to be disclosed.

Data Protection and Freedom of Information are two sides of the same coin. It is essential that members have a good understanding of both so that they can comply with their own obligations and scrutinise their council to ensure that it is complying with its obligations.

Ibrahim Hasan and Paul Simpkins are directors of Act Now Training (www.actnow.org.uk). They run courses and online training for local authority members and officers.

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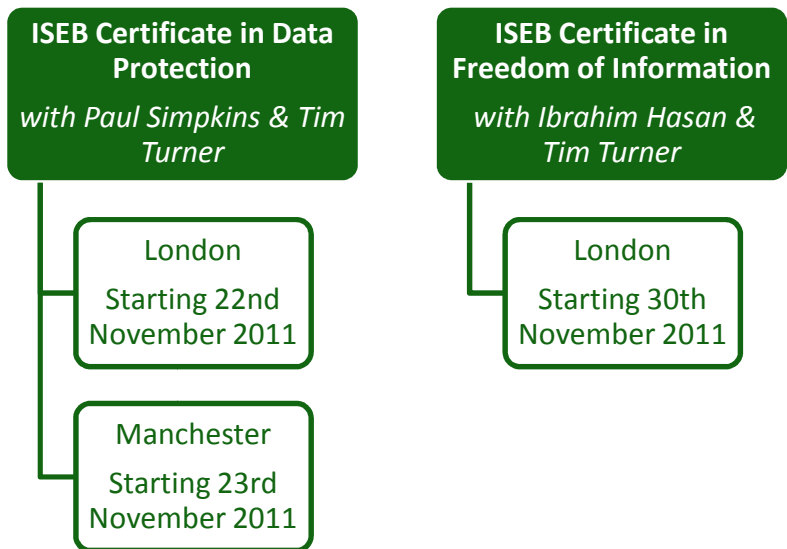
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