

Freedom of Information Act (2000) and Environmental Information Regulations (2004) Publicly owned companies

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The Freedom of Information Act 2000 (FOIA) gives rights of public access to information held by public authorities. This is part of a series of guidance notes to help public authorities understand their obligations and to promote good practice.

Some companies are public authorities for the FOIA if specific criteria are met. This guidance explains when a company is 'publicly-owned' and is therefore subject to the FOIA.

Overview

Companies that are 'publicly-owned' in accordance with the FOIA are public authorities in their own right and so have the same obligations as all other public authorities in complying with the FOIA.

This includes companies:

- wholly owned by the Crown (this includes situations where ownership is shared between more than one government department);
- wholly owned by a single public authority; or
- that are wholly owned subsidiaries of publicly-owned companies.

It does not include companies:

- wholly owned by public authorities who are listed in the FOIA only in relation to particular information; or
- wholly owned by more than one public authority (other than government departments).

Publicly-owned companies are either limited by shares or by guarantee.

What does the Act say?

Section 3(1) of the FOIA includes within the meaning of a public authority "a publicly-owned company as defined by section 6."

The definition in section 6 (1) says that a company is a 'publicly-owned company' "if-

- (a) it is wholly owned by the Crown, or
- (b) it is wholly owned by any public authority listed in Schedule 1 other than –
 - (i) a government department, or
 - (ii) any authority which is listed only in relation to particular information."

This is the only category of public authority that is made subject to the Act without any specific reference in Schedule 1, or a subsequent ministerial order introducing additions to the Schedule or designating new public authorities.

Companies wholly owned by the Crown

Section 6(2)(a) says that "a company is wholly owned by the Crown if it has no members except –

- (i) Ministers of the Crown, government departments or companies wholly owned by the Crown, or

- (ii) persons acting on behalf of Ministers of the Crown, government departments or companies wholly owned by the Crown”

This means that two or more government departments may share the ownership of a company without affecting its status as a company wholly owned by the Crown.

Examples of companies that are wholly owned by the Crown include:

- Northern Ireland Water (sole shareholder the Department for Regional Development);
- the Forensic Science Service (sole shareholder the Secretary of State for Home Affairs);and
- the Commonwealth Development Corporation (sole shareholder the Department for International Development).

Companies wholly owned by public authorities other than government departments

Section 6(2)(b) says that “a company is wholly owned by a public authority other than a government department if it has no members except –

- (i) that public authority or companies wholly owned by that public authority, or
- (ii) persons acting on behalf of that public authority or of companies wholly owned by that public authority.”

Unlike companies that are wholly owned by the Crown, where ownership can be ‘shared’ between more than one public authority (for example two government departments), this part of the definition can only be met if the company is wholly owned by a single public authority. Consequently, a company such as Manchester Airport plc, which is owned by all the Greater Manchester local authorities, is not a publicly-owned company under the FOIA.

Example

The Commissioner was able to issue a decision notice in a case involving British Waterways Marinas Limited ([FS50100127](#)) because it was a company wholly owned by British Waterways, itself a public authority listed in Schedule 1, and so was a public authority in its own right.

Whilst there are relatively few Crown-owned companies, there is potentially a wide range of companies that fall within section 6(2)(b). For example, in the local government and higher education sectors companies may be set up by public authorities for a variety of purposes:

- **Higher education**

It is very common for universities to establish companies, usually in order to benefit commercially from their intellectual property, technological expertise and research. This could be, for example, in the form of new venture companies or general consultancy services. Cambridge Enterprise Limited is one such company, where the University of Cambridge is the sole shareholder. In the same way, the University of

Manchester is the sole shareholder in University of Manchester Intellectual Property Limited, a company set up in order to help University researchers commercialise the intellectual property arising from their research.

- **Local government**

This is another sector in which public authorities may set up companies, usually as a means of providing specific services.

- ▶ Transport for London (TfL) is an example, one which also shows how section 6 brings subsidiary companies within the definition of 'publicly-owned company':
 - TfL itself is listed as a public authority in the local government section of schedule 1.
 - TfL has three subsidiary companies, which, as they are wholly-owned by TfL, are themselves public authorities.
 - One of these subsidiaries, Transport Trading Limited (TTL), is a holding company which wholly owns all the operating transport companies, for example London Underground Limited and Docklands Light Railway Limited. In view of the definition of section 6(2)(b)(ii), this means that these subsidiaries of TTL are also public authorities.
- ▶ Local authorities will sometimes set up companies in the area of facilities management and economic development. For example:
 - Wigan Metropolitan Development Company Limited is wholly- owned by Wigan Council and was established in order to promote economic development and investment within the council's area.
 - Solutions SK Limited is wholly owned by Stockport Council and provides a range of services including building and grounds maintenance, environmental services and catering.
- ▶ An Arms Length Management Organisation (ALMO) set up by a local authority to manage its housing stock is probably the most common example of a publicly-owned company in the local government sector:
 - An ALMO is usually set up as a company limited by guarantee, with the local authority as the sole member or guarantor. In this way the definition of section 6(2)(b) is met and the ALMO is a publicly-owned company, and therefore a public authority, for the purposes of the FOIA.
 - The ALMO will manage and improve all or part of the local authority's housing stock with the ownership remaining in the hands of the local authority. For example, Leeds City Council owns three ALMOs (East North East Homes Leeds, West North West Homes Leeds, and Aire Valley Homes Leeds) who are responsible for managing council-owned housing in Leeds.
 - The intention is that with a significant degree of independence an ALMO will be able to develop new approaches to the management of the housing stock.
 - An ALMO should not be confused with organisations that are sometimes known as Arms Length Trading Organisations (ALTOs) which will

operate separately, for example with their own governance and management arrangements, whilst remaining part of the public authority.

Wholly owned companies that are not public authorities

We have seen above that companies wholly owned by more than one public authority (other than government departments) are not publicly-owned companies for the purposes of the FOIA. If a wholly owned company falls into one of the following categories, it is also not regarded as 'publicly-owned' under the terms of the FOIA and so is not a public authority:

- A wholly owned subsidiary of a public authority that is listed in Schedule 1 of the FOIA only in relation to particular information (section 6(1)(b)(ii)).

Example

The BBC is listed in Schedule 1 of the FOIA as a public authority "in respect of information held for purposes other than those of journalism, art or literature." This means that any wholly-owned subsidiary of the BBC, such as BBC Worldwide Limited, is not a public authority for the FOIA. This was confirmed by the Information Commissioner in [decision notice FS50082246](#) as was the fact that BBC America, as a wholly-owned subsidiary of BBC Worldwide, is also not a public authority.

- A company that is wholly owned by the Crown or other public authority, but where the members are not acting on behalf of the Crown or authority or of companies wholly owned by the Crown or authority (section 6(2)((a)(ii) and 6(2)(b)(ii)).

Responsibilities

If a company meets the definition of a publicly-owned company under the FOIA it is a public authority in its own right and has the same responsibilities as any other public authority in complying with the Act. The 'owning' public authority should raise awareness of these responsibilities with the companies concerned.

All information held by a publicly-owned company is held for the purposes of the FOIA. However, the Secretary of State can, by order, define certain information held by a publicly-owned company as 'excluded information' which falls outside the scope of the FOIA. To date no such order has been made.

Environmental information

If a company meets the definition of a public authority for the purposes of the FOIA, it will automatically be a public authority for the Environmental Information Regulations 2004 (EIR).

If the information being considered is environmental information, disclosure must be considered under the provisions of the EIR rather than the FOIA. For more information on what constitutes environmental information, see our guidance: [What is environmental information?](#)

More information

This guidance will be reviewed and considered from time to time in line with new decisions of the Information Commissioner, Tribunal and courts on freedom of information cases. It is a guide to our general recommended approach, although individual cases will always be decided on the basis of their particular circumstances.

If you need any more information about this or any other aspect of freedom of information, please contact us.

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