



Freedom of Information Good Practice Guidance No. 1

Refusal Notices

The Information Commissioner's Office (ICO) has produced this guidance as part of a series of good practice guidance designed to aid understanding and application of the Freedom of Information Act 2000. The aim is to introduce some of the key concepts in the Act and to suggest the approaches that may be taken in response to information requests.

The guidance will be developed over time in the light of practical experience.

Refusal Notices

Aim of this guidance

This guidance refers to section 17 of the act, the 'Refusal of a Request'.

When refusing a request a public authority must issue a refusal notice. The ICO has found that public authorities have not always given full consideration to the issuing of refusal notices. This guidance will outline the factors that authorities should consider before issuing a refusal notice and highlight the benefits of producing notices that are clear and well drafted.

Section 1 of the Freedom of Information Act places a number of obligations upon public authorities.

- s1.1(a) an applicant is entitled 'to be informed in writing whether it holds information of the description specified in the request', this is known as 'the duty to confirm or deny'.
- s1.1(b) where information is held the applicant is entitled 'to have that information communicated to him.'

Refusal Notices

A public authority may refuse a request for information where:

- The request is vexatious or repeated.
- The cost of complying with the request exceeds the 'appropriate limit'
- The information requested falls under one of the exemptions listed in Part II of the Freedom of Information Act.

When refusing a request a public authority must issue a refusal notice. This must be done promptly and not later than the 20 working days after the request is received.

What are the benefits of issuing good Refusal Notices?

- May result in fewer requests for internal review.
- May result in fewer complaints made to the ICO about your public authority.
- The ICO will consider any refusal notice when dealing with a complaint.
- The Information Tribunal is likely to consider any refusal notice when handling appeals.

The ICO has emphasised the importance of clear and fully explained refusal notices. A poor notice that does not fully explain an authority's decision may indicate that a request has not been dealt with seriously. The refusal notice should be clear so that the ICO, and potentially the Information Tribunal, can understand why a request has been refused.

As noted by the Information Tribunal in the case of [Dr P Bowbrick v The Information Commissioner](#), the Commissioner has a duty to consider the application of an exemption which is introduced during the consideration of a complaint. However, the Commissioner would expect this to be a rare occurrence and would inevitably find that the authority had breached the requirements of Section 17 of the Act by failing to include the exemption(s) in the initial refusal notice.

When is there no requirement to issue a refusal notice?

A public authority is not obliged to issue a refusal notice if it considers that a request is vexatious or repeated and,

- it has already issued a refusal notice to the applicant in relation to a recent similar request stating that the request is vexatious or repeated and,
- it would be unreasonable to do so again.

See [Awareness Guidance 22 – Vexatious and Repeated Requests](#)

Duty to confirm or deny

If a public authority decides to refuse a request it is still obliged to confirm whether or not it holds the information requested unless;

- The confirmation or denial of whether information is held would involve the disclosure of exempt information. This itself may be subject to the public interest test and may apply to only some of the information requested.
- The cost of ascertaining whether the information is held would exceed the appropriate limit set out in Section 12 of the Act.

See [Awareness Guidance 21 - Duty to Confirm or Deny](#)

What if the information is not held?

If the authority does not hold the information requested it does not need to issue a refusal notice. However, within 20 working days, the authority must confirm in writing that it does not hold the information requested.

Exemptions

A public authority may refuse a request to disclose information if it is relying upon one or more of the exemptions listed in Part II of the Freedom of Information Act.

In this instance the authority must issue a refusal notice clearly stating upon which exemption it is relying and the reasons why the exemption applies, (if this would not be otherwise apparent). It is insufficient to merely state that a particular exemption applies. The authority must clearly explain why it believes a particular exemption applies, not just which exemption applies, unless to do so would involve the disclosure of exempt information. The extent to which an authority will have to explain its refusal will depend upon the nature of the request and of the exemption upon which it is relying.

Where an exemption is prejudice based the authority must also explain the likely harm that would arise from disclosure of the information or by confirming or denying that the information is held. For more information on prejudice based exemptions please see [Awareness Guidance No 20 – Prejudice and Adverse Effect](#).

Most exemptions, though, are qualified. This means that a public authority has to consider the public interest in its decision to disclose or withhold information, after it has determined that an exemption applies. Therefore, the refusal notice must explain not only which exemption applies and why, but also the public interest arguments addressed in reaching the decision (see below).

As long as disclosure would not breach other legislation, for example, the Data Protection Act 1998, an authority may decide to release the information anyway, even if an exemption applies, if it believes this would be in the public interest. Similarly, a public authority is under no obligation to refuse a request on the basis of it being vexatious, repeated or exceeding the appropriate limit.

In the case of an absolute exemption the public authority simply has to satisfy itself that the information requested falls within that category.

Refusal Notices and the Public Interest Test

In cases where an authority decides that the public interest in maintaining the exemption outweighs that in disclosure, it must make full reference to the public interest test in the refusal notice.

A public authority should make it clear why it considers the public interest in maintaining the exemption outweighs the public interest in disclosing the information. It will not be sufficient for an authority simply to state that it is not in the public interest to disclose information in any particular instance. Similarly it is not sufficient for an authority merely to list the factors it has considered when applying the public interest test. A refusal notice should outline the reasoning the authority has followed in arriving at its decision and why it feels one factor, or set of factors, outweighs another, unless to do so would involve disclosure of exempt information.

See [Awareness Guidance No 3 – Public Interest Test](#)

Extension of time for Public Interest Test

The Freedom of Information Act also provides that where a public authority reasonably needs more time to arrive at a decision under the public interest test, it must clearly state this in its refusal notice together with an estimate of when a decision is likely to be reached. The authority is still required, within 20 working days, to state in the notice under which particular exemption it is considering where the public interest lies. This is still a “refusal notice” under the Act even though the public authority has not at this stage decided to turn down this request.

The Commissioner has published further guidance with reference to his views of the time authorities should take in completing both the [public interest test](#) and [internal reviews](#).

Environmental Information Regulations (EIR)

The Environmental Information Regulations also require a public authority to issue a refusal notice in the case of a request for information being refused. Unlike the Freedom of Information Act the EIR list a series of exceptions, rather than exemptions, where a request for information may be refused. There are no absolute exceptions and all are therefore subject to the Public Interest Test, described above. Under the EIR there is no extension in the time limit for considering the Public Interest Test, though a public authority may have up to a maximum of 40 days when dealing with a voluminous and complex request.

Internal review and complaints procedure

A refusal notice must include details of the public authority’s internal review procedure for dealing with complaints regarding requests under the freedom of Information Act. Where an authority has no such procedure in place the refusal notice must state this.

Clearly, having such a procedure in place will benefit the authority in that it may prevent a complaint being made to the Information Commissioner. A rigorous approach to internal review will allow a public authority to review the merits of its own decision.

The refusal notice must also provide details about the requester's right to complain to the Information Commissioner after any internal review procedure has been exhausted, the address is as follows:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
Tel: 01625 545 745
Fax: 01625 524 510
Email: enquiries@ico.gsi.gov.uk

Appendix A – Refusal Notice Checklist

Qualified Exemption

- Confirm or deny whether the requested information is held (unless to do so would constitute disclosure of exempt information).
- If the information is not going to be released, state which qualified exemption applies.
- Explain why the exemption applies.
- Explain the public interest arguments that have been considered when deciding upon disclosure.
- Outline your authority's appeals procedure (or clearly state that no procedure exists if this is the case).
- Provide details of the right to appeal to the Information Commissioner

Absolute Exemption

- Confirm or deny whether the information is held (unless to do so would constitute disclosure of exempt information).
- If the information is not going to be released, state which absolute exemption applies.
- Outline your authority's appeals procedure (or clearly state that no procedure exists if this is the case).
- Provide details of the right to appeal to the Information Commissioner.

Cost Exceeds the Appropriate Limit

- Confirm or deny whether the information is held (unless to do so would constitute disclosure of exempt information)
- Where the cost exceeds the appropriate limit, state what this cost is.
- Provide advice and assistance if possible. We would encourage public authorities to advise what steps could be taken by the applicant to make the request fall within the appropriate limit (e.g narrowing the scope of the request), or
- Provide what information could be produced within the appropriate limit.

- Outline your authority's appeals procedure (or clearly state that no procedure exists if this is the case).
- Provide details of the right to appeal to the Information Commissioner.

Request is Vexatious or Repeated

- Confirm or deny whether the information is held (unless to do so would constitute disclosure of exempt information).
- Explain why the request is considered to be vexatious or repeated.
- Outline your authority's appeals procedure (or clearly state that no procedure exists if this is the case).
- Provide details of the right to appeal to the Information Commissioner.
- N.B An authority is not obliged to issue a refusal notice if it has already issued a notice in relation to a similar repeated or vexatious request from the same person or persons acting in concert.