



Information Commissioner's Office
Promoting public access to official information
and protecting your personal information

The ICO's strategy for the discharge of its Freedom of Information Act and Environmental Information Regulations functions

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Summary

- During 2009/10 all full-time senior caseworkers will have an objective to close 30 cases. Our predictions for total cases closed for the year are based on this assumption. We also anticipate that our customer service team will be able to close 1,500 cases and our triage team a further 1,000.
- We expect that a full decision notice will be required in less than 15% of all cases.
- We estimate that there will be 100 appeals against decision notices during 2009/10.
- Highlighting ICO, tribunal and court decisions of particular significance, we will undertake a structured annual programme for providing targeted advice and guidance.
- We will continue to issue and publicise Practice Recommendations to authorities who demonstrate serious and or persistent failure to comply with the Codes of Practice and will work with them to ensure that they implement the necessary changes to achieve compliance with the Code.
- In accordance with our new Monitoring Strategy, we will monitor the adoption and operation of publication schemes across the public sector, using spot checks and taking enforcement action where necessary.
- We will more actively communicate the benefits of maximum openness to public authorities – whether through publication schemes or by other means.

1. Our vision

A society where information rights and responsibilities are respected by all:

- Public authorities are open and transparent, providing people with access to the official information as a matter of course.
- People are aware of their rights to access official information and are confident in using them

2. Our priorities

- Continue to improve efficiency, so that all freedom of information complaints can be closed within an acceptable time.
- Secure adequate resources for the delivery of our freedom of information functions.
- Use our good practice and enforcement powers strategically and effectively to promote compliance with the law.
- Accelerate a long-term trend away from individual freedom of information requests and complaints towards a culture of routine, proactive and substantially increased transparency on the part of government and other public bodies.

3. Context

- 3.1 Freedom of Information legislation has been operational for over four years. It introduces the legal Right to Know, a presumption of disclosure and other measures to improve public sector transparency.

- 3.2 It has become part of the fabric of public life. Four years on, the national media reports disclosures made under the Freedom of Information Act (or the companion Environmental Information Regulations) almost every day. Much more is disclosed at local level. The surprise is no longer the nature and extent of disclosure. What is astonishing is how much was previously treated as secret.
- 3.3 There has been a strong public appetite with high volumes of requests and complaints. Some 400,000 requests have been made in the first four years. Ministry of Justice figures state that about 80% of requests to central government are granted in full or in part. The ICO has received over 11,000 complaints as at March 2009. This is small compared to the total number of requests. We have closed over 10,000 cases. Of these more than 1,100 have resulted in a formal decision notice. Of the remaining cases, well over half have been closed informally following a careful consideration of the issues, which often involves extensive investigation. Many of these have involved a negotiated outcome. The final third of cases have been ineligible, incomplete or have been so obvious that we have been able to deal with them easily and quickly.
- 3.4 There appears to be a wide respect for our formal decision notices in which we explain our reasons for deciding whether or not to order disclosure. Many of these are controversial, require complex analysis and/or call for careful judgement. There is a wide range of unfamiliar, and often highly sensitive, subject matter. In about 30% of cases we upheld the requester's complaint in full. In about 25% we rejected the complaint. And in about 45%, we partly upheld the request - usually ruling that the complainant is entitled to some information, but not all.
- 3.5 Either side can appeal against our decision notice, without cost, to the Information Tribunal. It is a welcome performance indicator that fewer than 30% of "losers" actually appeal, meaning that over 70% accept our ruling. Of those that do appeal, the Tribunal is now broadly

upholding the line we have taken in more than 80% of the cases. There is a growing and important jurisprudence from the Tribunal and a few cases are now going to the higher courts. So far, they are interpreting the Act in a way which is largely consistent with our approach over the first four years.

- 3.6 Freedom of information has not been problem-free. As in other countries, the early years have proved difficult for some public authorities, with unexpected burdens and some embarrassing or unwelcome disclosures. There are those who consider the law has gone too far and could have an undesirable impact on public administration. But the law has widespread support within the media, interest groups and the political community.
- 3.7 Most important of all, the impact on the general public appears to have been substantial. ICO research about the benefits of access shows marked increases from 2004 to 2008, clearly attributable to the impact of freedom of information law. The percentage of those agreeing that freedom of information “increases knowledge of what public authorities do” has risen from 54% in 2004 to 84% in 2008, and those agreeing that it “increases confidence in public authorities” has gone from 51% to 75%. These figures are matched by attitudes within public authorities themselves – 91% now say the Act is needed and 81% say it improves trust.

4. Complaints

PRIORITY

Continue to improve efficiency, so that all freedom of information complaints can be closed within an acceptable time.

- 4.1 Handling complaints under section 50 of the Act has been the ICO’s key role since the Act came fully into force in January 2005. It is our

main function under the Act and has to remain the top priority. The number of complaints received and closed have been higher than anticipated and the numbers have steadily risen year on year.

	2004/05 (3 months)	2005/06	2006/07	2007/08	2008/09	2009/10 (projected)
Cases received	365	2,713	2,592	2,623	3,096	3,200- 3,300
Cases closed	71	1,666	2,601	2,658	3,026	3,250- 3,350

4.2 We cannot sacrifice the imperative that we must provide a quality service, resolving complaints responsibly, with consistent and widely-respected outcomes. But many of the complaints have proved to be very complex and investigations have taken too long. Delay reduces our effectiveness and damages our reputation and is costly for public authorities who have to re-open delayed cases, sometimes with new staff.

4.3 More caseworkers and improved productivity within the ICO have enabled us to close roughly as many cases as we received for each of the last three years. However, the continuing increase in the number of complaints, and the level of resources available, has prevented us from making significant inroads into the rolling caseload arising from the first two years. Our freedom of information budget has been maintained at £5.5 million for 2009/10. We anticipate receiving more cases than in previous years (in the range of 3,200 – 3,300) in addition to cases carried forward from 2008/09 (currently around 1400). But we aim to continue to increase the number of closures, in line with improved closure targets, by achieving greater productivity.

ASSUMPTION

During 2009/10 all full-time senior caseworkers will have an objective to close 30 cases. Our predictions for total cases closed for the year are based on this assumption. We also anticipate that our customer service team will be able to close

1,500 cases and our triage team a further 1,000.

- 4.4 Our strategy in handling complaints involves the Customer Services Team closing promptly those which are not valid complaints or which can be resolved or moved on by straightforward action, for example a request for internal review by the public authority. We are now able to close these cases – more than 50% of the total – within 30 days.
- 4.5 The ICO's approach for the remaining complaints is increasingly to resolve them informally wherever possible. After initial investigation, this may involve explaining to a public authority that they are obliged to disclose some or all of the information requested or by explaining to the complainant that the public authority is fully justified in withholding information from them. Informal resolution is established good practice for complaints-handling bodies and a very effective use of resources.

KEY POINT

As lines taken in formal decisions by the ICO and the Information Tribunal become more settled, our strategy will be to build even more on our robust closure policy by seeking to close as many cases as possible informally without the need for a decision notice. Where the complainant refuses to accept a closure on this basis we may issue a short decision notice confirming our decision

ASSUMPTION

We expect that these measures will mean that a full decision notice will be required in less than 15% of all cases.

- 4.6 Cases which do require a written decision notice usually need to summarise the complaint, the results of the ICO's investigation, the Commissioner's decision, the reasons for it and the steps required (if any) to remedy the situation. Some cases require a more detailed investigation and reasoned decision than others.

KEY POINT

As more precedents are set through case law from the courts, the Information Tribunal and the ICO's own decisions, we will seek to reduce the length and detail of decision notices wherever possible, by incorporating previous reasoning by reference to a legally settled position.

4.7 These new arrangements will be reinforced by:

- Improving the freedom of information policy knowledge base which has already yielded many benefits for caseworkers;
- Improved triage of complaints, including consideration of new cases by a senior triage panel of decision notice signatories, making quick decisions where possible, or otherwise providing an early steer on the key issues for complaints officers.
- Speeding up the sign-off process so that all decision notices are either ready for immediate signature or clearly set out any unresolved issues requiring further consideration.
- Using these measures to help improve our customer satisfaction as measured by research.

5. Appeals

5.1 Decision notices may be appealed by either party to the Information Tribunal. They are expensive for the ICO, which - given the government's initial expectation that there would be few appeals and most would be resolved on paper - has never been adequately recognised in budget provision. Most hearings take place in London. Originally all our appeals were dealt with almost entirely by external counsel. However, we now have a team of in-house lawyers who handle the majority of cases which do not result in an oral hearing

before the Tribunal and draft much of the initial legal documentation for those that do. This is much more cost-effective. External counsel continue to represent the ICO at most oral hearings.

KEY POINT

Our strategy is to continue to develop in-house legal skills. This may extend to include advocacy at some Tribunal hearings where this is appropriate and cost-effective.

- 5.2 We anticipate that, just as the need for formal decision notices will reduce over time, so the number of appeals to the Information Tribunal will reduce. Certainly we anticipate that more appeals will be able to be disposed of summarily by reference to established case law.

ASSUMPTION

We estimate that there will be 100 appeals against Decision Notices during 2009/10.

6. Resources

PRIORITY

Secure adequate resources for the delivery of our freedom of information functions.

- 6.1 The bulk of the grant-in-aid received from the Ministry of Justice must inevitably be devoted to complaint-handling, but we must take care not to neglect entirely our other responsibilities. The overall budget - £5.5 million for 2009/10 with no guarantee that this level of funding will be maintained for future years - is very modest in absolute and relative terms, has arbitrary foundations and still does not have any sort of formulaic link with case volumes or our other responsibilities.

Our approach will be:

- Improve efficiency in line with this Strategy and our detailed business plans.
- Further improve our management information to enable us to better demonstrate the outcomes of case handling and the implications for the fulfilment of the ICO's freedom of information functions.
- Work constructively with the Ministry of Justice towards a more strategic approach to resourcing to allow for better long-term planning, not just year-to-year.

7. Good practice and enforcement

PRIORITY

Use our good practice and enforcement powers strategically and effectively to promote compliance with the law.

- 7.1 The early years of the freedom of information/Environmental Information Regulations legislation have been a period of fast learning and development in terms of both law and practice. The ICO has a duty to promote good practice by public authorities. Guidance explaining the approach the ICO and the Tribunal take to the interpretation of the Act's requirements, the exemptions and the public interest test is essential to reduce the burden on public authorities and improve the operation of the law.
- 7.2 In the past, the lack of a dedicated resource for producing and updating authoritative guidance from the ICO has limited our ability to give public authorities the help they have needed to fulfil their obligations efficiently and effectively. This may well have caused an increase in complaints about the handling of individual requests.

- 7.3 In the last year the ICO has been able to remedy the situation by embarking upon a programme of refreshing existing guidance and producing new guidance. The ICO's website is the primary vehicle for disseminating our guidance which we promote through media relations, our e-newsletter and direct communications. The guidance will need continuously renewing as ever-more cases are decided. We also need to improve stakeholder attitudes to the ICO and respond to the turnover of freedom of information staff in public bodies which means there is a continuing demand for support and guidance from the ICO.

AIM

Highlighting ICO, Tribunal and court decisions of particular significance, we will undertake a structured annual programme for providing targeted advice and guidance.

- 7.4 Our strategic emphasis will continue to help public bodies and their staff as far as possible. But - mainly resulting from involvement with complaint-handling and our new proactive monitoring strategy - we will monitor the performance of obligations under the Act and the Codes of Practice. We will highlight examples of good practice and of poor practice as a means of encouraging improvements.
- 7.5 Certain aspects of good practice in handling freedom of information requests are specified in the Secretary of State's Code of Practice issued under section 45 of the Act and its equivalent under the Environmental Information Regulations. The Commissioner has power to issue Practice Recommendations to any public authority which fails to conform with the Code of Practice. The ICO published a Policy Statement on issuing Practice Recommendations in August 2006 which remains valid.
- 7.6 Practice Recommendations are not legally enforceable and the ICO encourages public authorities to regard Practice Recommendations not as a sanction, but as a measure designed to support and assist them to

recognise not only the need for compliance but the benefits which good practice brings to the authority and to the public.

AIM

We will continue to issue and publicise Practice Recommendations to authorities who demonstrate serious and or persistent failure to comply with the Codes of Practice and will work with them to ensure that they implement the necessary changes to achieve compliance with the Code.

- 7.7 Systemic or significant failure to comply with the Act will cause the ICO to consider enforcement action under section 52. The ICO published its Enforcement Strategy in October 2006 and it remains in force. The ICO's approach is always to seek improvements in a public authority's practice by education and persuasion, with formal action as a last resort.

KEY POINT

The ICO has the power to require a public authority to take such steps as are necessary to ensure compliance with the legislation and we will use those powers in appropriate cases, in line with our published enforcement strategy.

- 7.8 We will monitor compliance by public authorities with the ICO's decision notices, information notices and enforcement notices and with steps required by the Tribunal to be taken following any appeal.

KEY POINT

Any failure to comply will result in referral under section 54 to the High Court, which may deal with the authority as if it had committed a contempt of court.

8. Proactive disclosure and publication schemes

PRIORITY

Accelerate a long-term trend away from individual freedom of information requests and complaints towards a culture of routine, proactive and substantially increased transparency on the part of government and other public bodies.

8.1 The impact of individual requests and disclosures has been significant, not least in changing attitudes and practices within public bodies. But such requests play a limited role, and have disadvantages, in moving towards a culture of greater openness:

- requests are heavily dependent upon the motivation and skills of each requester;
- they are serendipitous and do little to establish any coherent pattern of improved transparency;
- they place public authorities “on the back foot” and can easily generate defensive or confrontational situations;
- they are likely to be a more expensive way of securing openness than more measured, and ultimately more comprehensive, arrangements.

8.2 The ICO welcomes and supports the fact that information management is now widely recognised as a key governance issue for public authorities. The benefits of openness and transparency, for organisations and for the public, are appreciated throughout the public sector. Giving clear, relevant information is integral to good customer service and the effective fulfilment of statutory responsibilities.

8.3 The Act sets out an inherent presumption in favour of disclosure. The Act’s vehicle for proactive disclosure of information is a requirement to adopt and maintain an approved Publication Scheme as a matter of

course. In reality most public authorities now publish information on their websites. Our new approach to revised publication schemes, effective from 1 January 2009, has been to support the use of the internet as the primary vehicle for disclosing information as a matter of course.

- 8.4 Our approach towards approval is to require an extensive amount of information to be made routinely available and to encourage further proactive disclosure over time. This improves access to information for the public and should reduce the number of individual requests which public authorities have to respond to under the Act.

AIM

In accordance with our new freedom of information Monitoring Strategy, we will monitor the adoption and operation of publication schemes across the public sector, using spot checks and taking enforcement action where necessary. We will also more actively communicate the benefits of maximum openness to public authorities – whether through publication schemes or by other means.

- 8.5 We will continue to investigate complaints of failure to adopt a publication scheme and failure to publish information in accordance with it.

9. Stakeholder and public engagement

- 9.1 Results from our most recent stakeholder feedback shows that while 64% of freedom of information stakeholders give the ICO a rating of excellent or very good, there is room for improvement: 16% rate the ICO as fair and 11% as poor. The two key drivers are “professionalism” and “quality of advice and information”. We need to improve on the latter and in other areas such as “timeliness” and “consistency”.

- 9.2 Our good practice guidance to public authorities will be supplemented by attendance at selected meetings with stakeholders where messages can be conveyed and issues discussed with those closely involved with the freedom of information/Environmental Information Regulations regime. Requests to address conferences and seminars will be considered in accordance with the ICO's speaking engagement policy.
- 9.3 We produce some information about the legislation, how to access information from public authorities and guidance on responsible use of information rights for members of the public and professionals. The ICO recognises its responsibilities to raise public awareness of information rights, good practice and related matters. Guidance for the public will be renewed and updated as necessary, but this cannot be a priority when resources are scarce. We regularly issue press releases to the media, especially about significant decisions, to send out clear messages about how the law enables the public to obtain information. But resource constraints dictate that we will not be able to devote any significant effort to public awareness or education and so we will rely largely upon the media to get the right messages across.
- 9.4 All telephone and email enquiries are dealt with initially by the ICO's Customer Service Team, but may be referred to other teams where more specialised advice or consideration is necessary.
- 9.5 We are aware that guidance is only as good as its communication to the right people. We are also aware that we need to improve stakeholder attitudes towards ICO's freedom of information work.

KEY POINT

As well as disseminating guidance through the ICO website, we will adopt a more active programme to communicate with staff in public bodies dealing with freedom of information issues.

9.6 Freedom of information inevitably generates controversy and sometimes discomfort. The ICO is not a campaigning or lobbying organisation, and must take care not to compromise its position as an independent and impartial adjudicator. At the same time, we cannot ignore the debates and we have statutory good practice and education functions which inevitably give us something of the role of “freedom of information Champion.” The law embodies a presumption in favour of disclosure and our vision makes clear that we will support openness in accordance with the spirit of the legislation. Many of our decisions and other activities have, and should have, a resonance which pushes public sector culture in the direction of greater transparency.

KEY POINT

Sometimes we will need to engage in debates about the scope of the law, but our strategy will be to focus on the values, principles and practicalities of the law.

Over the next few years there will be debates about the 30 Year Rule, extension of the Act to bodies not currently covered, and possibly further exclusions or exemptions. The ICO will promote and defend the law responsibly, drawing upon our experience and expertise, but always in a measured way.

10. Records management

10.1 Freedom of information has been a key driver in getting public authorities to improve and maintain their filing and electronic records management systems. The ICO advocates the view that without effective records management, it will be very difficult for public authorities to comply with the requirements for proactive disclosure in accordance with their approved publication scheme or to respond promptly to individual requests for information.

- 10.2 The Freedom of Information Act reinforces this view by providing for a Code of Practice to be issued by the Lord Chancellor providing good practice guidance on the keeping, management and destruction of records. Failure to comply can lead a Practice Recommendation. Before issuing a Practice Recommendation on records management, the Commissioner must consult with the Chief Executive of The National Archives, in her capacity as Keeper of Public Records, or the Deputy Keeper in Northern Ireland.
- 10.3 To support this function, the ICO maintains regular liaison with the National Archives and the Public Record Office in Northern Ireland.

KEY POINT

We will continue to work closely with The National Archives to identify authorities which merit a Practice Recommendation and to ensure that the necessary changes are made to those authorities' records management practices to achieve compliance with the Code.

11. International liaison

- 11.1 The ICO recognises that many other countries throughout the world have laws on access to official information, many of which have been in operation for far longer than the UK's Freedom of Information Act. There is a growing international community of freedom of information professionals, including Information Commissioners, ombudsman or equivalent independent complaint resolution bodies.
- 11.2 Having hosted the 4th International Conference of Information Commissioners in Manchester in 2006, the ICO continues to be a significant member of the international freedom of information community. Sharing and discussing different approaches to similar issues with comparable organisations helps us to develop our own

approach to complaints, policy issues and our good practice and enforcement work.

KEY POINT

Whilst this is a minor aspect of our work, we will continue to keep involved with relevant international developments, aspiring to be recognised as world thought leaders in demonstrating how open government is good government.

- 11.3 Scotland has its own freedom of information legislation for Scottish public authorities and its own Information Commissioner to promote and enforce it. There are many similarities to the UK Act but also some important differences. The ICO keeps in close contact with the Scottish ICO through regular liaison at all levels, including bi-lateral meetings between the Commissioners.

12. Where does this take us?

- 12.1 This strategy is driven by the legal obligations which the freedom of information and Environmental Information Regulations legislation places on the ICO. After four years of operation some trends are beginning to emerge.
- 12.2 Since the initial surge, following the introduction of the fully retrospective right to request information, there has been a gradual but steady increase in the number of complaints to the ICO, accelerated in this last year. As issues are settled we may see a decline in complaints and appeals in future years, as other jurisdictions have, but there is no sign that this is imminent.
- 12.3 In the circumstances, our primary focus must be resolving complaints from those who are dissatisfied with the way their requests for information have been handled. Inevitably, this means that other

important aspects of our work referred to in this Strategy will not get the priority they merit.

12.4 The trend towards more disclosure as a matter of course, through publication schemes and prompt, positive responses to requests, is likely to continue and will be encouraged and monitored by the ICO.

12.5 One thing however, seems certain. Freedom of information is now established as part of the fabric of public life. The principles of openness and transparency are universally recognised as right for public authorities. The ICO will continue to play a significant part upholding and promoting those principles using the resources made available to it with increasing efficiency and effectiveness.