



## Freedom of Information Act

### Information held: information held on behalf of another

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.

This guidance will indicate to public authorities when information they hold on someone else's behalf may still be held by them for the purposes of FOIA.

#### Overview

For the purposes of the FOIA:

- Where the information is held **solely** on behalf of another person the public authority does not hold the information itself.
- Where a public authority holds information principally or partly on behalf of another person and exercises control of the information, it will also hold the information itself.

#### What does the Act say?

Section 3(2)(a) of the FOIA says that, for the purposes of the Act, information is held by a public authority unless it is held on behalf of another person.

#### Information held on behalf of another person

Public authorities will often hold information on behalf of other persons. Examples include the court service on behalf of the judiciary, councils on behalf of the electoral registration officer, universities on behalf of individual students, and a County Records Office on behalf of parish councils.

Whether the information is held for the purposes of FOIA by the public authority itself, or by the public authority solely on behalf of another, is a matter of fact to be determined on the circumstances. There are factors that will assist in determining whether the public authority holds the information.

The weight attached to each factor will depend on the circumstances. In some circumstances one factor may outweigh all the others.

#### Factors that would indicate that the information is held solely on behalf of another person:

- The authority has no access to, use for, or interest in the information.
- Access to the information is controlled by the other person.

- The authority does not provide any direct assistance at its own discretion in creating, recording, filing or removing the information.
- The authority is merely providing storage facilities, whether physical or electronic.

**Example:**

A council providing the funding and administrative support for a coroner held the information contained in a coroner's case records solely on behalf of the coroner. The coroner had sole control of the information, having statutory authority to determine who had access to it.

Information Tribunal decision: Digby-Cameron v Information Commissioner ([EA/2008/0010](#); 16 October 2008)

The sole control of the coroner, having a statutory basis, was the only factor that needed to be considered.

**Factors that would indicate that the information is also held by the public authority:**

- The authority provides, clerical and administrative support for the other person, whether legally required to or not.
- The authority controls access to the information.
- The authority itself decides what information is retained, altered or deleted.
- The authority deals with enquiries about the information.
- Costs arising from holding the information are included in the authority's overall budget.

**Example:**

The Privy Council Office held itself the information contained in documents it held on behalf of the Visitor for the University of London. The role of the Visitor was carried out by the Lord President of the Privy Council on behalf of the Sovereign. As the Privy Council Office performed administrative and management functions for the Visitor from its own budget, it held the information itself.

Information Tribunal decision: McBride v Information Commissioner ([EA/2007/0105](#); 27 May 2008)

**Factors that are irrelevant:**

- The public authority does not have exclusive rights of access to the information.

- There is no legal basis for the public authority holding the information.

### **Other considerations**

If a public authority does not hold the information requested because it is held on behalf of another person, it should tell the requester that it does not hold the information.

Where information is held solely on behalf of another public authority the section 45 Code of Practice advises that good practice requires:

- the public authority to transfer the request to that other authority, if this is what the requester wants; or,
- the requester to be informed where to direct the request.

If the request is for environmental information, whether or not it is held has to be considered in accordance with the Environmental Information Regulations (EIR). Environmental information is held by a public authority if it is in the authority's possession and has been produced or received by it. This piece of guidance does not cover the meaning of possession of environmental information in the EIR.

You might also want to consider our guidance on [When is information caught by the Freedom of Information Act? AG12](#), which provides general guidance on this topic.

### **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 to this area, 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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