

Freedom of Information Act Environmental Information Regulations



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

Practical guidance

Complaints and investigations files - how to approach them

The Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR) provide rights of public access to information held by public authorities. This is part of a series of guidance notes produced to help public authorities understand their obligations and to promote good practice.

This guidance gives advice on what to do when someone who has complained to a public authority asks to see the file on their complaint. It explains when the request should be treated as a data protection subject access request (SAR).

Overview

- Complaints files about a specific individual's case should usually be treated as the personal information of the complainant.
- Consider whether an FOI or a data protection approach would be more beneficial to the requester.
- Where the complainant does not have a legal right to the information you may still choose to release it in certain circumstances.

What does the law say?

The Data Protection Act 1998 (DPA) gives individuals a right to have a copy of information about themselves. A request under the DPA is called a "subject access request". Section 40(1) of the FOI Act and EIR 5(3) give absolute exemptions for information which is the personal data of the requester. Requests for the individual's own personal data should be treated as subject access requests.

Receiving a request

There is no requirement in either Act for an individual to specify which type of request they are making. Members of the public may refer to the wrong piece of legislation or to neither. You need to decide whether to handle the request as an FOI request or a subject access request.

Example:

"Please send me a copy of the file relating to my complaint, reference number XYZ123."

Complaints and investigations files are likely to contain a mixture of personal and non-personal information. Whether information is personal data is a case-by-case judgement and you will not be able to tell for certain until you have read

the contents of the file. However, it is possible to give rules of thumb for how you should initially approach a request.

Remember: you will need to be certain of the identity of an individual to determine whether the information requested is their personal data. You may need to see an identity document such as a passport.

Some complaints files are likely to consist mostly of the complainant's personal data:

- The complaint is about how the individual has been treated or whether their rights have been breached.
- The investigation has focussed on a specific case.
- The file contains mostly documents from or about the complainant.

Example:

The requester has complained about his treatment in hospital. The complaint file contains his medical records, letters, and statements from the medical personnel who saw him.

The information may be personal data of the complainant even if its main focus is a particular situation or another individual.

Example:

The Information Tribunal found that the records of an investigation against two police officers, relating to their treatment of the complainant, were the personal data of the complainant as well as of the police officers (Tribunal decision [Fenney v IC EA/2008/0001](#), June 2008).

⇒ You should start by considering this request as a subject access request under the Data Protection Act.

Some files are not directly related to the individual who made the complaint:

- The complaint was about activities or events which did not directly affect the complainant.
- The investigation covered ongoing activities or general policies and practices, rather than a specific incident involving an individual.
- The investigation was initiated by a number of complaints from different people.

Example:

The requester has contacted the council to report fly-tipping. The investigation file includes complaints from several individuals as well as CCTV and other evidence collected by the authority.

⇒ In this case, you should deal with the request according to your normal FOI procedures.

Dealing with the request as a subject access request

If you have decided that the request should be treated as a subject access request, you should:

- notify the requester that you believe their request is for their own personal data;
- log their request as a subject access request and ask them for any further information, identification or fee you require; and,
- provide the information requested within 20 working days (this is good practice and will ensure you meet the DPA requirement to respond within 40 days).

Our [Checklist for handling requests for personal information](#) explains how to respond to subject access requests.

If you are willing to release the entire file to the specific requester then there is no need to consider possible exemptions under either regime.

Dealing with the request under FOI

- If you are willing to release all the information as a freedom of information request then do so (i.e. if you would release it to anybody).
- Include any personal data of the requester which they would be entitled to under DPA, whether or not you would release it to a third party.
- Where an individual has said they are making their request under the FOIA, you should make it clear that some of the information is being released under the DPA and would not necessarily be released to another requester.

If you are providing all the information requested, there is no need to separate out personal and non-personal data or to provide a refusal notice. However, it would not be appropriate to release the complainant's personal data more widely, for example, as part of an online disclosure log.

Sometimes, it would be fair to release information to the specific requester but not to the wider world; for example, where the file contains information about a close relative of the requester. You may wish to consider releasing this information on a discretionary basis, but make it clear that the disclosure is outside FOI. This will help manage expectations and avoid setting a precedent.

Withholding information

Both the FOIA and the DPA contain exemptions from disclosure where there is a genuine reason to withhold information. The exemptions from data protection subject access are more limited, as people have a greater right to information about themselves.

If you believe some information should not be released, you will need to consider in more detail whether the information you wish to withhold is personal

data of the requester. Our Data Protection technical guidance note on [Determining what is personal data](#) should help with this decision.

Note that there are different fees regimes for subject access requests and FOI requests. If you refuse an FOI request on the grounds that the cost of responding would exceed the fees limit, you will still usually be obliged to provide the requester's personal information at a maximum fee of £10.

More information

You may also wish to look at the following guidance:

[Awareness guidance 16 – Investigations \(section 30\)](#)

[Awareness guidance 17 – Law enforcement \(section 31\)](#)

This guidance will be reviewed and considered in line with new decisions of the Information Commissioner, Tribunal and courts on freedom of information cases. It is a guide to our recommended approach to this area.

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

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