



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

## **FOI Practice Recommendations Policy Statement**

The Information Commissioner may issue a Practice Recommendation when it appears that a public authority's practice does not conform to that proposed in one or more provisions of the FOI or EIR Codes of Practice. The Commissioner's statutory authority in relation to Practice Recommendations is set out in section 48 of the Freedom of Information Act 2000 (FOIA). This policy statement forms part of our FOI Enforcement Strategy.

Practice Recommendations will address matters of poor practice, not breaches of the FOIA or Environmental Information Regulations (EIR). They are non-enforceable and should be viewed as a way to carry out good practice. However, following a Practice Recommendation will help a public authority to satisfy its legal obligations under FOI.

We are more likely to issue a Practice Recommendation in response to repeated poor practice, although we may issue one for a single incident of very poor practice.

We are made aware of poor practice in a number of ways.

- By investigating section 50 and section 52 cases.
- When the public authority itself notifies us, such as by requesting assistance with good practice.
- By evidence from a good practice assessment or audit.

Examples of where we might issue a Practice Recommendation include:

- poor records management;
- a lack of or poor retention and disposal policies;
- a lack of or poor internal review procedure;
- shortfalls in consultation with third parties;
- a failure to transfer requests for information; or
- the existence of excessive confidentiality obligations inconsistent with FOI disclosure requirements.

For example, where a public authority has no evidence that information subject to an FOI request has been destroyed, it may indicate poor records management. This may lead to us issuing a Practice Recommendation on the grounds of a failure to maintain adequate disposal documentation in line with the Records Management Code.

Failure to provide advice and assistance (section 45 FOIA or the EIR Codes of Practice) may also constitute a breach of the FOIA or EIR. Where this is the case, we will usually investigate under section 50 or section 52 of the Act as this will allow us to take enforcement action, if appropriate.

When a public authority does not comply with a Code of Practice, and this comes to our attention, we will make the decision as to whether to issue a Practice

Recommendation on a case-by-case basis. Where it is unclear if the authority has complied with the code, it may be more appropriate to issue an informal letter or start discussions with the public authority, and take no immediate further action.

We will consider the frequency or extent to which an authority breaches a code when determining whether to issue a Practice Recommendation. For example, the breach of a minor provision within a section of a code (such as not publishing timescales for dealing with internal appeals) may not merit the same kind of action as the breach of an entire provision (such as having no internal appeals procedure). It will depend on what the consequences are in terms of the public authority's ability to effectively carry out its obligations under FOI.

If a public authority does not implement a Practice Recommendation we previously issued, and this leads to a breach of the FOIA or EIR, we will take this into account when deciding whether to take formal action against the public authority. We will make this decision in line with our FOI Enforcement Strategy.

A Practice Recommendation will contain details of the Code of Practice which we believe the authority is not following. It will state in what way the authority has not complied with the code and will recommend action to take. It will be signed by the Commissioner or by an authorised senior member of his staff.

We will publish Practice Recommendations in line with our transparency policy.

We must consult the National Archives before we issue a Practice Recommendation relating to the section 46 Records Management Code. This consultation will take place in line with our Memorandum of Understanding with the National Archives. In the case of Northern Ireland public authorities, this consultation will take place with PRONI – the Public Record Office of Northern Ireland. We will note any consultation in the Practice Recommendation.

We will monitor compliance with Practice Recommendations.

Although a Practice Recommendation is not directly enforceable, a failure to comply with a Practice Recommendation may lead to a failure to comply with the FOIA or EIR. Further, a failure to take account of a Practice Recommendation may lead to an adverse comment in a report to Parliament by the Commissioner.