

# Freedom of Information Act Environmental Information Regulations



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

## Practical guidance

### When should names be disclosed?

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 to public authorities on when the names of staff, officials, elected representatives or third parties acting in a professional capacity should be released in response to an access request.

#### Overview

The key point is whether it would be fair to name the individual. This should be looked at on a case-by-case basis and should consider the following.

- Is the information about the person's public role?
- Would they expect their role to be subject to public scrutiny?
- Is there a likelihood of unwarranted damage or distress to the individual?

This guidance covers situations where people are mentioned in documents as decision makers, advisers or attendees at a meeting. Where a request has been made specifically for information about staff, please see our technical guidance on [Access to information about public authorities' employees](#).

#### Personal information

Section 40(2) of the FOIA and EIR 13 both provide an exemption from disclosing information about identifiable individuals where it would breach the Data Protection Act. Our guidance on [Personal Information \(FOI Awareness Guidance 1\)](#) gives more detail on this exemption.

The main consideration is whether it would be fair in all the circumstances to identify an individual. You should consider this on a case-by-case basis.

#### Fairness - factors to consider

1. Does the information requested relate primarily to the person's public function rather than their private life?
2. Should the individual expect their role to be subject to public scrutiny? You should consider:
  - how senior they are;

- whether they have a public profile; and,
- whether their role requires a significant level of personal judgement and individual responsibility.

**Example:**

The Information Tribunal found it was not necessary to release the name of a junior civil servant who had signed off a decision because he was “acting largely on behalf of others” and was “not personally responsible” ([DWP v IC EA/2006/0040](#), March 2007). On another occasion, the Tribunal said the names of more junior civil servants could be released where they were in roles which involved giving evidence to parliamentary committees or where they had some managerial responsibilities ([MoD v IC and Mr R Evans EA/2006/0027](#), July 2007).

It is good practice to have a policy on routinely disclosing names at certain levels, in certain roles or in certain circumstances. However, this does not mean that the names of more junior staff should always be withheld. Often, it will not be unfair to release their names as the context will not be sensitive or controversial.

3. Should the individual reasonably expect that their name could be released in response to an FOI request?

- The fact that a public authority has not specifically warned employees or officials about FOI is not a bar to disclosure, as they should anyway be aware of the Act’s existence.
- Public authorities should not give blanket promises of anonymity. An FOI policy on routine disclosures should not imply that names could never be released in other circumstances.
- It may be unfair to release people’s names if they have been given an explicit assurance of confidentiality in circumstances where they might legitimately fear being identified.
- However, public authorities cannot evade their FOI responsibilities by giving an artificial assurance of confidentiality in circumstances where identifying individuals would not otherwise be unfair.

**Example:**

The Information Tribunal agreed that “no assurances could lawfully have been given” by the House of Commons that MPs personal information would not be disclosed under FOI. ([House of Commons v IC and Norman Baker MP EA/2006/0015 and 0016](#), Jan 2007).

**Example:**

The Information Commissioner found that the General Medical Council (GMC) should not reveal who handled a particular complaint. These staff had been given an explicit assurance of anonymity due to previous occasions where they had been approached outside work by those who were under investigation (ICO decision notice [FS50090630](#), Jan 2007).

4. Would disclosure cause unwarranted damage or distress to the individual?

- This includes risks to a person's safety and security.
- It may also include unfair damage to their career or reputation.
- It does **not** include embarrassment, legitimate criticism, or the risk of misunderstanding or misrepresentation.

**Example:**

A local authority received a request for a report produced as part of an internal investigation. The Commissioner decided that the names of individuals who had been under investigation should not be released, even though they had been exonerated, because simply being associated with the affair could tarnish their reputations and harm their future careers (ICO decision notice re. Rotherham Metropolitan BC [FS50105111](#), Jan 2007).

The presumption is in favour of protecting privacy, so the release of personal information will only be fair if there is a genuine reason to disclose. This involves a three-stage test. A public authority will generally have to satisfy itself that:

- there is a legitimate interest in disclosure;
- the legitimate interest can only be met, or fully met, by the disclosure of information which identifies individuals (i.e. the disclosure is necessary to that purpose); and,
- the disclosure would not involve unwarranted detriment to the individual's privacy or other rights and legitimate interests.

This three-stage test is not exactly the same as a public interest test, but it involves similar considerations,

- You should identify the legitimate interests which a member of the public might have in the information. These may not be the same as, or limited to, any interest expressed by the particular requester, although any arguments they put forward should be considered.
- You should consider whether the names add to the value of the information, or whether the interests would be fully met by providing information with the names redacted.
- You should decide whether the benefits of disclosure are proportionate to any potential harm, distress or intrusion to the individuals named.

## Other exemptions

Section 40(2) FOIA and EIR 13 may not be the only relevant exemptions.

FOIA sections 35 and 36 provide exemptions where disclosure could hinder good policy-making or the effective conduct of public affairs.

- It is not sufficient to assert that fear of disclosure will inhibit professional civil servants from carrying out their role effectively in the future.
- Fear of misunderstanding or misrepresentation should not be a barrier to transparency. Where necessary, the information requested could be published with additional context provided.
- There should be no blanket policy on withholding the names of civil servants, but there may be a public interest in protecting their anonymity where this could be harmful to their ability to give impartial advice. For example, they may be unfairly blamed for a political decision or become the focus of intrusive media interest. It may be appropriate to withhold the name of an official associated with a controversial policy, if they are relatively junior or if the name adds little value to the information.
- This should not be used to protect politicians from criticism of the decisions they have taken. It may be appropriate to release advice which conflicts with a minister's decision, without identifying the official who gave it. Lobbyists are also entitled to less protection than those giving impartial advice (Tribunal decision in [DBERR v IC and Friends of the Earth EA/2007/0072](#), April 2008).

Section 38 FOIA provides an exemption relating to health and safety. In the EIR, regulation 12(5)(a) may be relevant.

Section 41 FOIA provides an exemption for information provided in confidence. Note that routine internal discussions are unlikely to be confidential; this exemption is more likely to apply in exceptional circumstances such as an internal investigation.

Advice on all the exemptions can be found on our website.

## More information

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 in this area.

If you need any more information, please contact us.

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