



Lincolnshire  
**POLICE & CRIME COMMISSIONER**  

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**SAFER TOGETHER**

# **OFFICE OF THE POLICE AND CRIME COMMISSIONER FOR LINCOLNSHIRE**

## **FREEDOM OF INFORMATION MANUAL**

**February 2018**

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## **STATEMENT OF FAIRNESS**

The Office of the Police and Crime Commissioner (“the OPCC”) for Lincolnshire is committed to the fair treatment of people regardless of their age, colour, culture, disability, ethnic or national origins, gender, race, religious beliefs or sexual orientation.

The content of this manual has been created to ensure that every individual or group is treated equitably and consistently.

When applying the FOIA, the OPCC will consider the legislative requirements that must guide decision making to avoid discriminating against any group or individual.

## INTRODUCTION

This publication has been written to explain the way in which the OPCC deals with Freedom of Information (FOI) requests and exactly what members of the general public may expect from us.

We provide an explanation covering all aspects of the implementation and application of the Freedom of Information Act (2000), including the application process and a review of the key exemptions we're likely to use and why.

From the outset, we would stress that the OPCC fully embraces the need to be transparent and accountable at every level. We have adopted a positive approach to the release of information wherever and whenever possible.

We believe that the public has a right to know that the OPCC it funds is being run efficiently and effectively. However, when considering the release of information, we must balance this right against our responsibility to the communities we serve. There is information that, if released into the public domain, would compromise the OPCC's ability to carry out its day-to-day business effectively and to exercise its functions appropriately. This is the type of information that we are committed to withholding for the benefit of the public and their communities.

Balancing the release of information that is in the public interest against what would harm organisational effectiveness is key to the consistent and equitable application of the Freedom of Information Act (FOIA).



Malcolm Burch  
Chief Executive and Monitoring Officer  
Office of the Police and Crime Commissioner for Lincolnshire

## THE FREEDOM OF INFORMATION ACT 2000

The spirit of this legislation is one of openness and accountability. By complying with the spirit of the Act, the OPCC is committed to proactively releasing information to inform and educate the public on how their money is spent.

The OPCC releases information to the public through 2 key tools:

- **Publication Scheme**

This makes available a significant proportion of information that will be routinely disclosed without waiting for it to be requested.

The Publication Scheme is regularly reviewed and updated and information will be added in response to requests for information.

- **General Right of Access**

The OPCC must make available requested information (subject to a range of exemptions) to any individual or organisation, anywhere in the world, so long as the request is made in writing, is legible and clearly identifies the information being sought.

## **MAKING AN FOI REQUEST**

### **What You Can Expect**

If you apply for information under the FOIA, you have the following rights:

- The right to be told whether we hold the information; and
- The right to receive the information you've requested, subject to the application of exemptions.

The OPCC's policy is to contact you to clarify your request upon receipt if necessary. This will help us to provide you with the most efficient service possible and narrow down the search for information you require, thus assisting you to the best of our ability.

We will acknowledge receipt of your request and provide you with an estimated time within which it will be dealt.

With straightforward requests, this will be within 20 working days (as stipulated in the legislation) and the first working day is classed as the day AFTER we receive the request.

Where we are required to apply more complicated qualified exemptions, we can 'stop the clock'. This means that for more complex requests or requests referring to sensitive information, we have more time to make a decision but we will inform you of how long it may take.

Another obligation we have under the Act is to provide the information in the requested format, subject to cost considerations. These will be explained shortly.

### **What You Must Do**

For a request to be valid under FOI, it must meet a number of criteria including:

- It must be made in writing by letter, fax or e-mail
- It must clearly describe the information being sought
- It must be legible
- It must contain the name of the applicant and a contact address, even if this is only an e-mail address; and
- Although not mandatory, it would assist us if you provided a telephone number.

FOI requests can be made from anyone anywhere in the world and they can be made by an individual or an organisation.

If you wish to make an FOI request, you neither need to mention the Freedom of Information Act in your application nor are you obliged to use a special form. However, it will help us to fast track your application if you mention the Act and use the application form on the next page.

### **What's Covered?**

The UK's Act is unique in that it is fully retrospective. As long as the public authority holds the information, it must consider releasing it.

The Act covers records capable of recovery **in any format**, no matter how it's recorded.

#### **The FOI Act:**

- Applies to information not data;
- Applies to information and not just documents;
- Applies to written records, typed, handwritten and scribbled notes, e-mails, spreadsheets, photographs, exhibits, tapes records, flip-charts, videos, audio tapes, computer tapes, logs, answer phone messages, tapes of telephone conversations, archived records;
- Applies to structured and unstructured information; and
- Applies to any information, documentation or record that's produced internally by the OPCC, or held by contractors or third parties on behalf of the OPCC, is covered by the Act.

# OFFICE OF THE POLICE AND CRIME COMMISSIONER FOR LINCOLNSHIRE

## Request for Information Under FOI

Please note a valid FOIA request **must** contain your name and an address. The provision of any other contact details is optional, however any additional information you choose to provide will enable the OPCC to provide you with a faster and more efficient service.

Title (e.g. Mr/Mrs/Miss/Ms): .....	Surname: .....
Forename(s): .....	
Postal Address: ..... .....	
E-mail Address: .....	
Tel. No. (daytime and/or mobile):.....	Facsimile No.....
If you are making this request on behalf of an organisation or business Name of organisation/business: .....	
Your position in the organisation/business:.....	
What information do you want? (Please be as specific as possible and attach an additional sheet if insufficient space.) ..... ..... ..... ..... ..... ..... ..... .....	
Would you like a copy of the original or a summary of the information <i>(tick box)</i> <input type="checkbox"/> Copy of the original <input type="checkbox"/> Summary of the information	
What type of format do you require <i>(tick box)</i> <input type="checkbox"/> Hard copy <input type="checkbox"/> Electronic copy	
Do you have any special requirements for the format? If so, please give details: .....	
We may consult with third parties if the information you have asked for originates from or affects their legal rights. Please tick this box if you would like your personal details withheld. <input type="checkbox"/> Yes, withhold my personal details	

Data Protection Act 1998: your personal data will only be used to enable us to deal with your request and for no other purpose.

Please return this form to: Chief Executive and Monitoring Officer  
OPPC for Lincolnshire, Deepdale Lane, Nettleham, Nr Lincoln LN2 2LT  
(or fax 01522 558739 or email it to [Lincolnshire-pcc@lincs.pnn.police.uk](mailto:Lincolnshire-pcc@lincs.pnn.police.uk))



## **Fees & Charging**

When dealing with FOI requests, the OPCC can charge for two types of fees:

- Marginal costs; and
- Disbursements

### Marginal Costs

Where the cost of dealing with a request is less than £450, we will provide the information free of charge.

Costs that may be included in the £450 limit are:

- Time taken in determining whether the information's held;
- Time taken in locating and retrieving the information;
- The first full reading of the information by the FOI decision-maker;
- Time taken in extracting information to be disclosed from other information;
- Time taken in editing, summarising or redacting (making invisible) information which is covered by an exemption;
- Time taken in communicating information including time spent writing a response to the request, and
- Time spent making arrangements for an applicant to view documents, books, and videos or electronically held information.

The OPCC will charge a standard hourly rate of £25 when estimating the cost of an FOI request. This equates to approximately 18 hours of work.

Costs that are not included are:

- Time taken to make a decision as to whether the material should be exempt under the Act;
- Time taken in obtaining authorisation to send out the information;
- Time spent to obtain the consent for disclosure from another public authority or any other individual or organisation, and
- Any overheads.

If your request for information will exceed the £450 limit, there are a range of options available to the OPCC. These are:

- Declining to answer the request since the cost of compliance will exceed the limit;
- Answering the request but charging for the full cost. This means that where the cost of answering the request is £500, we can pass the full cost onto you and not just the £50 over and above the £450 limit;
- Answering the request and waiving the fee;
- Entering into a discussion with you to refine the question to a more manageable level that would fall within the fees limit;
- Contacting you to determine whether you would like part of the information up to the prescribed maximum;

- Discussing with you whether you would like your request to be dealt with outside the FOIA;
- Discussing with you whether you would like a summary or digest of the information you have requested, and
- Offering you the opportunity to view the information if the cost of providing it in permanent form be too costly.

### Disbursements

The OPCC can pass on the full cost of disbursements incurred in responding to an application to the applicant.

The maximum amount that may be passed on is £50.

Disbursements include:

- Photocopying or printing material;
- Postage;
- Producing material in an alternative format, such as putting it onto CD-Rom, video, audio cassette or in Braille; and
- Translating information into a different language at the request of the applicant (not Welsh).

The following charges for disbursements have been agreed:

Cost per photocopy	10p per page
CD-Rom Disk	At cost
Postage	As per Royal Mail
Packing	At cost
Video	At cost

### **Fees Notices**

Where the cost of the request will exceed the £450 limit, we will send out a fees notice. This will be within a maximum of 20 days.

Applicants will then have 3 calendar months to meet the fees notice so that the request may be processed.

Fees are not subject to VAT.

On occasions, fees may also be charged for information that appears on the OPCC's publication scheme. Details of any charges will be clearly stated on the publication scheme itself.

### **Transferring Requests**

If we receive a request and do not hold the information, we will transfer the request on your behalf and with your prior agreement. If you would prefer, you will be given the option of re-submitting independently.

If we hold some but not all of the information you are asking for, we will provide what we can and transfer the remainder of the request to the relevant body with your agreement.

If we receive a request, do not hold the information and are unsure as to where the information might be held or feel a transfer may be inappropriate, we will advise you accordingly.

#### Consulting with a Third Party

Where a request for information might impact the legal rights of a third party, we will consult with the third party prior to the release of any information. However, where the OPCC is the original receiving body, we will take the ultimate decision on the release of information, whether that is in its entirety or as an edited version.

#### Providing Assistance

We are committed to providing the best service we can in respect of FOIA applications.

Where necessary, we will contact you to establish a rapport at an early stage and clarify exactly what information is required, particularly where the request is ambiguous or the information is unidentifiable.

If you are unable to make a request in writing – due to illiteracy, disability or illness, for example – we are committed to providing assistance.

#### Communicating Information

When requesting information, you may express a preference for the format in which you wish to receive the reply, whether that be in permanent form or in another form.

We will also provide:

- Reasonable opportunity for you to inspect a record containing the information; and/or
- A digest or summary of the information in permanent form or in another form acceptable to you.

We will comply with your preferred form of presentation as far as it is reasonably practicable. In determining whether it is reasonably practicable, we will review all the circumstances, including the cost.

Where we are unable to comply with your preferred format, we will notify as to the reasons why. Where you have not specified your preferred method of communication, we will provide the information by any means reasonable in the circumstances.

Where a request for information has been made successfully, we will advise you in writing of the following:

- The decision;
- The date on which it was made;
- The name and designation of the person who dealt with the request;
- Form and manner of access; and

- Your right to complain, including details of the internal complaints procedure and the Information Commissioner's details.

### **Where a Request is Refused**

Where we receive a request for information and its release is refused, we will advise you, the applicant, within 20 days, of the following:

- The decision;
- The day on which it was made;
- The name and designation of the person who dealt with the request;
- The grounds for refusing the request, e.g. the application of an exemption, in the public interest, cost of compliance;
- When exemption/s are used, the specific exemption used and the reasons for using the exemption;
- When the public interest test has been considered, the reasons why it was applied;
- Any other issues relevant to the decision or matters that were taken into consideration; and
- Details for the internal procedures for dealing with complaints and your right to apply to the Information Commissioner for a decision notice.

**Note:** The OPCC is not obliged to state why an exemption applies if by doing so, exempt information would be revealed.

### **Dealing with Vexatious or Repeat Requests**

The OPCC can refuse to process an FOI request if we consider it to be either vexatious or repeated, or both.

If this is the case, we will inform you within 20 days of receiving the request. At the same time, we will provide details about our internal procedures for dealing with complaints and your right to apply to the Information Commissioner for a decision notice.

If a notice has already been issued that a request is repeated or vexatious, we will not send out a further notice.

Where a second request is received for information that has already been provided and the second request is identical or substantially similar, we will not comply with the request unless a reasonable time has elapsed between the two requests.

### The Complaints Procedure

Our decisions and actions on any request will be logged and recorded. These will be retained, together with any other pertinent information in the event of a complaint.

### Structure of Review

We have rigorous procedures in place to ensure that the original decision-maker will provide an independent reviewer with all the information relevant to processing the complaint.

We will review the following aspects of the request, as appropriate:

- Timescales.
- Was the applicant kept informed?
- Was the applicant helped to locate information if not held by the OPCC?
- Was the response communicated in the format preference of the applicant? If not, why not?
- Was a transfer or partial transfer of request made? If so, was this handled correctly?
- Was a fees notice served and the principles of the charging regime applied?
- Was a refusal notice served?
- If the request appeared to be vexatious, was the correct procedure followed and the correct decision reached?
- Was the information requested sourced correctly?
- Was there a need to obtain additional information?
- Were all systems and information directories searched in response to the information requested?
- Were any problems encountered in obtaining the information from the information owners?
- Analysis of decisions made by the FOI decision-maker in relation to any exemptions applied.
- Analysis of the application of the public interest test and the resulting decision.
- Review of comments made by information owners (if any) regarding disclosure of the information.
- Discussion with the FOI decision-maker with regard to their decision logs (if appropriate).

### **Involving the Information Commissioner's Office (ICO)**

The ICO will only accept complaints AFTER the complaint has been processed through the OPCC's own internal complaints procedure.

Once the complaint has been reviewed by the ICO, it will be returned to the OPCC, at which point it becomes subject to our own internal processes once more.

The responsibility for monitoring the operation of the FOI Act and enforcing obligations placed upon public authorities lies primarily with Information Commissioner.

Failure to comply with notices issued will be treated as contempt of court.

The Information Commissioner has the power:

- To issue decision notices
- To enforce the right of access to information, and
- Enforce sanctions.

### Timing

It is the OPCC's policy to deal with complaints and appeals in a timely manner. Thus, the target time for responding to appeals and complaints will be as *soon as practicable and in any case within three months*.

## EXEMPTIONS

### Introduction

When an FOI request is made, we will adopt the spirit of the legislation and look to release the information. However, there will be occasions where exemptions contained within the Act must be applied. The purpose of these exemptions is to assist the OPCC in protecting information that, if released, may have a negative impact on our ability to fulfil our core functions.

There are 23 exemptions included under the FOIA. The exemptions are classified as either 'absolute' or 'qualified'.

Where an absolute exemption applies, no release is required under Freedom of Information legislation.

Where a qualified exemption applies, the public interest test must be considered. This gives the OPCC more time to make a decision about the release of information. Where there is a public interest in releasing information and a benefit to the community as a whole, the information will be disclosed. However, where the opposite is true, we will withhold the information.

The complete list of exemptions is as follows:

<b>Section 21</b>	Information accessible to applicant by other means
<b>Section 22</b>	Information intended for future publication
<b>Section 23</b>	Information supplied by, or relating to, bodies dealing with security matters
<b>Section 24</b>	National security
<b>Section 26</b>	Defence
<b>Section 27(2)</b>	International relations
<b>Section 28</b>	Relations within the UK
<b>Section 29</b>	The economy
<b>Section 30</b>	Investigations and proceedings conducted by the public authority
<b>Section 31</b>	Law enforcement
<b>Section 32</b>	Court records
<b>Section 33</b>	Audit functions
<b>Section 34</b>	Parliamentary privilege
<b>Section 35</b>	Formulation of government policy
<b>Section 36</b>	Prejudice to the effective conduct of public affairs
<b>Section 37</b>	Communication with Her Majesty etc and honours
<b>Section 38</b>	Health & safety
<b>Section 39</b>	Environmental information
<b>Section 40</b>	Personal information
<b>Section 41</b>	Information provided in confidence
<b>Section 42</b>	Legal professional privilege
<b>Section 43(1)</b>	Commercial interests
<b>Section 44</b>	Prohibitions on disclosure

It is the responsibility of the OPCC to provide a structured and valid argument to justify the non-release of information.



## THE PUBLIC INTEREST TEST (PIT)

### Introduction

The PIT is a centrally important to the application of qualified exemptions.

When we apply the PIT, it is not sufficient that the information will be of interest to the public: its release must be **beneficial to the community as a whole**.

There is no definition of the 'public interest' in the UK's FOI legislation. The definition will evolve and develop as cases are brought before the ICO.

At this stage, we will be applying the following criteria in favour of disclosure:

- **Accountability** – When information disclosed relates directly to the efficiency and effectiveness of the OPCC and/or its Officers.
- **Public Participation** – Where disclosure would enhance informed debate and decision-making by the OPCC.
- **Public Awareness** – Where disclosure of information about issues of general concern can assist individuals in making decisions about their own activities.
- **Public Debate** – Where release of information would contribute to the quality and accuracy of public debate.
- **Justice to an Individual** – The public interest may be served by providing individuals with information of particular reference to them and their situation e.g. information that would assist the applicant to understand the steps taken by the OPCC in dealing with their request/complaint, information which would assist them to assess whether to pursue a legal remedy or otherwise.
- **Research** – In appropriate cases providing information/records that assist in research could benefit the community at large.
- **Accountability for Public Funds** – Where public funds are being spent, there is a public interest in accountability and justification.
- **Improper Actions of Public Officials** – Disclosure of information relating to the abuse of office.

The following criteria will be applied by the OPCC in favour of non-disclosure:

- **Exemption Provisions** – Where one or more of the exemption provisions applies and gives rise to a public interest consideration favouring non-disclosure.
- **Interests of Third Parties** – Where third party interests might be jeopardised by release of information that relates to personal affairs of individuals and/or sensitive commercial information held about business, financial or contractual issues. See also Data Protection issues.

- **Efficient and Effective Conduct of the OPCC** – Where the current or future role of the OPCC may be compromised by the release of information.
- **Fair Treatment of an Individual** – There can be public interest in non-disclosure of information that adversely affects the reputation of an individual e.g. where they have been the subject of unsubstantiated allegations.
- **Fishing Expeditions** – It would not be in the public interest to release all information relating to a vague ‘catch all’ type request. In these circumstances, the applicant will be contacted to determine exactly what information is required.
- **Existing Procedures** – It would not be in the public interest for Freedom of Information to be used to obtain information which is already available under existing procedures.
- **Tortuous Duty** – In circumstances where the OPCC is under a legal obligation to maintain confidences, it would not be in the public interest to release the information if the grounds for this duty can be shown to be valid.

In addition, there are a number of criteria that may not be considered as part of the public interest test or may be applied only in limited circumstances:

- **Embarrassment** – To the OPCC or an individual is not a valid public interest consideration favouring non-disclosure. Potential embarrassment to the OPCC or an individual officer does not prohibit disclosure of information.
- **High Public Office** – Where the subject of the information, the giver or the recipient of the information holds high office, this is not in itself sufficient to weigh against disclosure; an assessment of the consequences of the disclosure of the particular issue is required.
- **Policy Development** – Even where information relates to policy development, this does not establish a public interest consideration favouring non-disclosure. Even if policy is under review, it still may be in the public interest to release.
- **Candour and Frankness** – Claims that disclosure would prejudice the supply of frank and candid information in the future can only be considered where there is a very particular factual basis to support this view. The possibility of future publicity through disclosure may deter immediate release and should provide an incentive to improve the quality of the information/record prior to disclosure.
- **Disclosure of Confusing or Misleading Information** – In most cases, the OPCC would have a means of avoiding such a prejudicial effect by releasing new or revised information to rectify any inaccuracies or clarify the situation. If a certain course of action hasn’t been considered and should have been, this is not enough to withhold.

- **Information/Records Held do not Fairly Reflect the Reasons for a Decision** – Where this occurs, the OPCC would have the opportunity to provide additional information that accurately explains the reason for the decision.
- **Draft Documents** – There may be benefits of public access to draft material, to further the accountability and public planning process. Draft documents may therefore be disclosed. Disclosure of this kind allows members of the public to examine the process by which a decision has been reached, thus serving the public interest.
- **Government Protective Marking Scheme (GPMS)** –The marking of material under the GPMS will not, in itself, be valid grounds for withholding information. GPMS indicates how a document should be transported and stored. The content of the material should be examined and the relevant exemptions applied only after discussion with the data owner and other relevant parties. Time elapsed since the document was marked under GPMS may also be factor in any decision to release or withhold.

Where the public interest test is applied to a request for information, we will provide a review of the reasons why we believe a decision to release or withhold information is or is not in the public interest.

## KEY EXEMPTIONS

### Introduction

There are a number of key exemptions that are particularly relevant to the types of information that we hold that we will cite regularly.

These are:

<b>Section 21</b>	Information accessible to applicant by other means
<b>Section 22</b>	Information intended for future publication
<b>Section 40</b>	Personal information
<b>Section 41</b>	Information provided in confidence
<b>Section 43(1)</b>	Commercial interests

We have provided detailed guidance on each of these key exemptions in this document.

## **SECTION 21 INFORMATION REASONABLY ACCESSIBLE BY OTHER MEANS**

### **Introduction**

This is an absolute exemption that we may apply if the information you request is available, or is published, elsewhere.

Under s21, we are required to confirm to you that the information you've requested can be found somewhere else and explain where it is and how you can go about obtaining it.

We are not, however, obliged to communicate the information to you as long as it's 'reasonably accessible'.

It may even be that we refer you to another public authority's website or to a website/source maintained by another individual or organisation.

Information is not 'reasonably accessible' if:

- You live a considerable distance away from the location where the information is held;
- You have mobility or other disability issues;
- There are other factors that may influence your ability to view the information i.e. if it is available in one location only;
- You don't have access to an Internet connection and are therefore unable to access websites; or
- The cost of accessing or obtaining the information is inordinately high.

Where a request is received in another language, the OPCC will translate the request, assuming this is practicable. We may ask you to visit your Citizens Advice Bureau or a community leader to provide us with an English version of the request.

We are not, however, under an obligation to translate information released in response to a request into another language, though this does not preclude us from doing so.

Where an applicant has a disability or may require the information in an alternative form – such as in Braille or an audio-tape – the onus is on the OPCC to consider providing it in the format requested, again assuming that it is 'reasonably practicable' to do so.

One of the key sources for information available by other means will be the OPCC's Publication Scheme. We will use our Publication Scheme to proactively publish frequently requested – and released – information. The aim of this is to provide applicants with easy access to key information classes and to simplify the request process for both you and us.

There may be occasions when we charge for information on our Publication Scheme but any fees will be clearly indicated to you. We will not use this exemption if the fee to access the information you've requested is inordinately high.

### **In Summary**

This is an absolute exemption and as such, there is no requirement for us to apply the public interest test.

If we cite s21, we will provide you with the following information:

- How and where the information you've requested can be found. If this is the OPCC's Publication Scheme, we will state the Internet address and also give details, if we are able, to the nearest public access to the Internet can be found (usually public libraries);
- Details of any specific procedure that you will need to follow; and
- Details of any relevant legislation and fees.

## **SECTION 22 INFORMATION INTENDED FOR FUTURE PUBLICATION**

### **Introduction**

We will use this exemption where we receive a request for information and the decision has already been taken to publish the information.

We cannot use this exemption if the decision to publish is taken only AFTER we receive the request.

When applying this exemption, a firm publication date does not necessarily have to have been set and the proposed publication may be via our Publication Scheme. We can also use this exemption where another authority or individual intends to publish.

s22 is a qualified exemption and therefore subject to the application of the public interest test.

There may be occasions when it's in the public interest to bring forward a publication date. This is the case even if the document in question is still in a draft form, so long as the message or information imparted is likely to remain unchanged. There may even be occasions when we publish parts of a document earlier than planned.

There may be occasions when the OPCC might wish to control the release date of certain information to ensure all parties that have an interest in it have equal access to it. Again, if the public interest dictates the date be brought forward, we are obliged to publish earlier than we may have intended.

### **In Summary**

s22 is a qualified exemption and therefore subject to the application of the public interest test.

This exemption is concerned with the TIMING of the release of information. It is not concerned with the suitability of the CONTENT for release.

Whilst the decision to publish has been taken in principle, the public interest will dictate whether the publication date should be brought forward. To use this exemption, the OPCC doesn't necessarily have to have a set date in mind for publication: however, the Act states that this date must be 'reasonable'.

There may be occasions when publication of certain information may be delayed to ensure a reasonable return from commercial publication: in these cases, we will apply a s22 exemption. However, we will not use this exemption to hide political embarrassment and administrative inefficiency to delay publication.

When we apply this exemption, we will confirm to you that the information will be published at a future date and if the date is known, we will provide details. We will also inform you of where the information will be published.

## **SECTION 40 PERSONAL INFORMATION**

### **Introduction**

This is a complicated exemption but one that will apply to the OPCC. There are two elements to it:

1. Where an individual requests information about themselves; and
2. Where an individual requests information about a third party.

In the first case, where an individual is requesting information about themselves, this is automatically exempted under the FOIA. This is a request for personal data and becomes a Subject Access Request, thus falling automatically under the Data Protection Act.

In the second example, where an application is made by an individual for information about somebody other than themselves, this is a third party application and falls under the FOIA. Where the release of information would breach any of the Data Protection Principles, as would be the case in the majority of examples, this information will probably not be released.

### **In Summary**

This exemption is complex and has elements that are absolute and elements that are qualified.

When we receive a request from an individual about themselves, we will automatically treat it as a Data Protection request. This is because it falls outside the remit of the FOIA. In this case, the OPCC does not need to confirm or deny the existence of the information.

If a request is received from an individual requesting information about somebody else, this is called third party data. This falls within the scope of the FOIA. However, it will be rare that this type of information would be released. In addition, the OPCC is not required to confirm or deny the existence of any information if doing so would contravene Data Protection Principles or imply the existence of requested information.



## **SECTION 41 INFORMATION PROVIDED IN CONFIDENCE**

### **Introduction**

We will use this exemption to protect information that has been provided in confidence.

Under the conditions of this exemption, we will be required to demonstrate that the information requested has certain characteristics that may be attached to it.

These characteristics include the following:

- The information must have been obtained from another person or public authority; and
- Its disclosure would mean that the OPCC would be open to legal action for a breach of confidence.

Information that might be exempted under s41 will include:

- Information received from another body or person;
- Information that is commercial, personal and official in nature and of a confidential nature.

Significantly, information that we consider to be 'confidential' is not necessarily covered by this exemption. In addition, this exemption does not apply to information that has been generated internally.

This exemption may be enforced only where an actionable breach of confidence would occur should the information be disclosed. In light of this, we will consider the following when taking a decision as to whether this exemption may be cited:

- Does the information have the necessary quality of confidence about it?
- Was the information imparted in circumstances that imply an obligation of confidence?
- If released, would there be an unauthorised use of that information to the detriment of the person communicating it?

The OPCC is relieved of the duty to 'confirm or deny' whether the information is held if doing so would result in a breach of confidence as outlined above.

### **In Summary**

This is an absolute exemption that does not require the application of the public interest test.

When we apply this exemption, we will need to demonstrate the following:

- That the information has the 'necessary quality of confidence';

- That the information was imparted in circumstances implying an obligation of confidence;
- That disclosure of the information would be to the detriment of a party; or
- That the party who gave the information objects to disclosure.

The duty to 'confirm or deny' is relieved if doing so would reveal any of the confidential information.

## **SECTION 42 LEGAL PROFESSIONAL PRIVILEGE**

### **Introduction**

The OPCC can use this exemption to withhold information that is covered by legal professional privilege.

Legal professional privilege is a mechanism by which the confidentiality of documents can be maintained. It is divided into two sections:

- (i) Advice privilege
- (ii) Litigation privilege

Advice privilege extends to correspondence between a party and their legal advisor which relate to the giving or receiving of legal advice.

Litigation privilege extends to correspondence between a party and their legal advisor which relate to a contemplated or impending legal action. It also extends to the collection of evidence to support or defend a contemplated or impending legal action.

The OPCC is not required to 'confirm or deny' whether such information is held if doing so would involve the disclosure of information which is privileged, or would be privileged if it was held.

### **In Summary**

This is a qualified exemption that requires the application of the public interest test.

We will use this exemption where information has been requested that may be defined as advice privilege or litigation privilege.

The OPCC is relieved of its duty to 'confirm or deny' if this action would disclose exempt information.

This exemption is only valid for 30 years following the creation of the information.

## **SECTION 43 COMMERCIAL INTERESTS**

### **Introduction**

The OPCC will use this exemption to prevent the release of information that is a trade secret.

Whilst there is no strict definition of the meaning of what constitutes a 'trade secret', there are a number of factors that we will consider when making our decision. These are:

- (a) Is the information commercially sensitive and does it give a company a 'competitive edge' over its rivals?
- (b) Is it obvious from the nature of the information that its release would cause harm and erode competitive advantage? Has the owner of the information stated this?
- (c) Is the information already in the public domain?
- (d) How easy would it be for others to discover or reproduce the information themselves?

The information is also exempt if its disclosure would have an adverse effect on the commercial interests of any person.

### **In Summary**

This is a qualified exemption. As such, the public interest test will be considered prior to the release or retention of any relevant information.

Integral to this exemption is the assessment of whether the information is a trade secret and that, as such, its disclosure would reveal a secret and if a commercial interest would or could be prejudiced if the requested information were to be released.

The OPCC is not required to 'confirm or deny' if doing so would have an adverse effect on the commercial interests of any person.