



SUMMARY OF CONSULTATION RESPONSES: AMENDMENTS TO THE FREEDOM OF INFORMATION ACT CODE OF PRACTICE

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CONSULTATION REPORT

Introduction

The purpose of this Consultation Report is to summarise the public responses to the Cabinet Office's Freedom of Information Code of Practice (the Code) consultation. This exercise sought public comments on proposed revisions to the Code's guidance for public authorities on their commitments under the Freedom of Information Act.

Background

Section 45 of the Freedom of Information Act (the Act) requires the Government to issue a Code of Practice providing guidance to public authorities on how to fulfil their functions under Part I of the Act. The current Code of Practice was issued in 2004, before the access regime introduced in the Act came into force in 2005. Consequently the Code does not reflect subsequent developments in good practice.

Under Section 45 of the Act, a Code of Practice is required to provide guidance on the following terms:

- the provision of advice and assistance by public authorities to requesters, or proposed requesters, of information from them;
- the transfer of requests from one public authority to another public authority who may hold the requested information;
- consultations with interested bodies, particularly those to whom the information requested relates or whose interests are likely to be affected by the disclosure of the information;
- contractual provisions with third parties on the disclosure of information that may be covered by the Act;
- the provision by public authorities of procedures for dealing with complaints about the handling of requests for information; and
- the disclosure by public authorities of datasets they hold.

Following the report of the Independent Commission on FOI, published on 1 March 2016, the Government announced it would review and update the current Code of Practice. The review would provide new, updated and expanded guidance to public authorities. The revised Code of Practice would include good practice on the areas set out above, as well as provide new

guidance on areas not previously covered. These areas would include the following:

- transparency about the performance of public authorities' handling of requests for information under the Act;
- the pay and benefits of senior staff, in line with recommendations by the FOI Commission for greater openness;
- the handling of vexatious and repeated requests, which the FOI Commission specifically recommended should be included in the Code; and
- defining a number of fundamental principles of FOI which are currently not outlined in the Code, such as defining "information" and how it is "held" for the purposes of the Act.

The Cabinet Office commenced a public consultation on a revised Code of Practice on the 15 November 2017. The consultation was open for comments for 12 weeks and closed on 2 February 2018.

Consultation Responses

The Cabinet Office received consultation responses from **58** individuals and organisations. Most of the respondents were from public authorities such as local councils and academic institutions, as well as from interested representative bodies and civil society groups (a list of the organisations who responded is included in **Annex A**).

Respondents offered a wide range of views on the draft Code of Practice that varied in detail. For example, there were a number of requests for clarification on very narrow focused points of policy, as well as suggestions on where the guidance might benefit from expanding its advice. The Cabinet Office has considered these suggestions in detail, and has revised the draft guidance, as appropriate, to make the Code a more useful document for public authorities.

While the Cabinet Office's consultation welcomed comments on all aspects of the revised guidance, it specifically asked a number of questions of respondents on key areas where advice had been expanded. An analysis of the responses is set out below; this draws out the messages that a majority of the respondents found important, and then groups the analysis under the areas covered by the consultation questions.

Understanding the Right of Access to Information

The majority of respondents found the draft Code of Practice clear and helpful in setting out the right to gain access to information contained in the Act. Furthermore, respondents found information on how public authorities should

manage requests under the Act helpful. For example, 26% of respondents found the guidance to be clear, while 47% found that the guidance was generally clear but offered suggestions for further advice and clarification. Only 3% of respondents found this part of the draft guidance unclear, with the remaining 24% offering no views on the issue.

A number of requests for clarification were raised around the timescales for various parts of the process of responding to FOI requests. The issues raised were in relation to statutory deadlines and general good practice where formal timescales are not specified. We have attempted to offer further clarity on these timeframes, where appropriate, in the revised Code.

Some respondents also asked for clarification around the use of social media when making FOI requests, and what format a public authority's response should have. As technology and trends in this area change continuously, we have incorporated some high level additional guidance, which should not become out-dated in the same way that detailed, platform-specific advice would.

A few respondents were keen for the guide to go into a little more detail about how to apply the different exemptions allowed under the Act; including advice on how to undertake and apply public interest tests. A number of requests were also made to provide clarity in regards to archived information and when such information was, and was not, considered to be 'held' by an authority. We considered these suggestions, but believe that the Code of Practice is not an appropriate mechanism for setting out detailed advice on exemptions and whether or not information is 'held' by an authority.

Publication of FOI Compliance Statistics

29% of respondents thought the draft Code provided sufficient detail on the publication of public authorities' FOI compliance statistics; however; 40% suggested areas where further detail would be helpful. 3% felt the guidance was not detailed enough but did not provide any additional advice on where it might be expanded, and 28% offered no comments on this issue.

A number of correspondents thought it would be helpful if the guidance increased the number of categories on statistics to be published. In particular, respondents felt that the statistics showing how information was granted or withheld, and which exemptions were used, should be more detailed. This would provide more granularity on how and when authorities responded to requests. It was pointed out that the Cabinet Office currently provides more detail when publishing its own and other central government departments' figures than outlined in the Code. We have endeavoured to strike a balance between providing a helpful level of detail while ensuring that publishing statistics does not become overly burdensome for smaller public authorities, and believe that the guidance now does this.

There were a number of observations about the regularity in which compliance statistics should be published. Some respondents, mostly small

district councils and academic institutions, felt that publishing statistics on a quarterly basis would be burdensome for those authorities who only handle a small to medium number of requests. While we are keen to ensure a degree of consistency between public authorities and when they publish statistics, ultimately it is for individual public authorities to determine the best mechanisms for publishing their statistics based on their own circumstances.

Publication of Senior Pay and Benefits Information

The section of the Code dealing with the publication of senior pay and benefits information produced a more diverse spread of views amongst respondents. The majority of authorities found the guidance clear; 17% found the guidance clear and helpful without further additions, while 50% found it clear but offered further suggestions and 14% found the guidance unclear, with 19% offering no comments.

The item which received a significant amount of comments and requests for further clarification was the draft Code's setting of a specific cash level (£90,000) above which senior staff salaries should be published; which respondents felt was overly prescriptive. This was a particular point of concern for academic institutions. Comments highlighted that sector-specific salary levels were already published in a number of sectoral guidance documents, which were significantly different to that of the Central Government salary level used as a best practice measure in the draft Code.

The draft Code draws upon the definitions used in central government departments. Respondents commented that doing so did not take into account the different management structures of public authorities in other sectors and that there was therefore some confusion as to which senior staff should be included in the statistics.

We have looked to clarify these issues within the code by emphasising that the focus should be on a public authority's core senior management team and that authorities should look to sector-specific guidance where this exists. We believe that the recommendations in the Code maintain the balance between privacy and transparency at senior levels of public authorities.

Use of Section 14 on Vexatious and Repeated Requests

The new guidance on vexatious and repeated requests received 40% support from respondents who were satisfied with the level of detail offered. 31% asked for additional detail or guidance, 29% offered no opinion and none of the respondents felt there was too much detail.

Respondents overwhelmingly welcomed the new advice on Section 14; an area that traditionally held much uncertainty for public authorities. We believe that the wording of the guidance on Section 14 also ensures that public authorities maintain the scope to apply common sense on a case-by-case basis.

Merging the Datasets and Main Codes of Practice

64% of respondents supported merging the Code of Practice for datasets, with the Code of Practice under section 45 of the Act. 36% of respondents did not offer a view and there were no objections to the proposed change. We will implement datasets into the final revised version of the Code.

Splitting the Datasets Guidance into Sections

Respondents were also supportive of splitting the datasets guidance into two sections, one on the release of datasets and one on the re-use of datasets. 57% of the respondents considered two sections for datasets to be a helpful split, while only 2% regarded it as not helpful, 41% offered no opinion.

There were few additional suggestions from respondents in reference to both questions on datasets; there were, however, a number of respondents requesting further clarification on how the Code's guidance aligns with the ICO's guidance on datasets.

Areas where Additional Guidance would be Helpful

61% of the respondents did not offer any additional comments or suggestions for further guidance. 10% did not consider any additional guidance necessary and 29% did offer a range of suggestions.

Revisions to the draft Code have been made in order to provide public authorities with practical and helpful guidance, without making the guidance overly prescriptive or cumbersome. For example, following requests for a reference table of all the exemptions under the Act, this has been added as an annex to the revised version of the Code.

Conclusion

The responses to the consultation were mostly in support of expanding and refining the good practice guidance contained in the Freedom of Information Code of Practice. Responders were content with the new areas of advice that had been identified; making the Code more useful and helpful. The additional guidance on vexatious requests and the restructuring of dataset guidance was found to be the most beneficial.

The Government is grateful to respondents for raising a range of issues on the draft Code. We aim for the Code of Practice to be a document that provides clear guidance for authorities, and the wider public, on best practices when having to carry out the statutory requirements under the Freedom of Information Act.

Annex A

LIST OF ORGANISATIONS THAT RESPONDED TO THE CONSULTATION

National Bodies

Archives and Records Association, UK and Ireland (ARA)
Charity Commission for England and Wales
Financial Conduct Authority
General Medical Council
HM Land Registry
Information Commissioner's Office
Northern Ireland Executive
Public Health Wales
Water Services Regulation Authority (Ofwat)
Welsh Government

Local Authorities

Bracknell Forest Council
Calderdale Council
Cambridgeshire County Council
Craven District Council
Crandall Parish Council
District Councils' Network
East Lindsey District Council
East Riding of Yorkshire Council
Gateshead Council
Hampshire Association of Local Councils
Hertfordshire County Council
Kirklees Council
Liss Parish Council
National Association of Local Councils
Northington Parish Council
Northumberland Association of Local Councils
Nottingham City Council
Oakley and Deane Parish Council
Oldham Council
Sheffield City Council
Stratford-on-Avon District Council
Warwickshire County Council
Welwyn Hatfield Borough Council
West Devon Borough Council
Wigan Council
Wyre Forest District Council

Academic Institutions

Birkbeck College, University of London
Canterbury Christ Church University
King's College London
Nottingham Trent University
Open University
Royal Holloway, University of London
Russell Group, The
Universities UK
University College London
University of Birmingham
University of Exeter
University of Huddersfield

Civil Society and Other Groups

Campaign for Freedom of Information
Channel 4
mySociety
Producers Alliance for Cinema and Television Ltd (Pact)
UK Open Government Civil Society Network
World Wide Fund for Nature: UK (WWF-UK)