LORD CHANCELLOR’S CODE OF PRACTICE
ON THE DISCHARGE OF
PUBLIC AUTHORITIES’ FUNCTIONS
UNDER PART I OF THE
FREEDOM OF INFORMATION ACT 2000,
ISSUED UNDER SECTION 45 OF THE ACT

NOVEMBER 2002

Presented to Parliament by the
Lord Chancellor
pursuant to section 45(5) of the
Freedom of Information Act 2000
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FOREWORD

INTRODUCTION

1. The Code of Practice, to which this is a foreword, fulfils the duty on the Lord Chancellor set out in section 45 of the Freedom of Information Act 2000, to provide guidance to public authorities as to the practice which it would, in his opinion, be desirable for them to follow in connection with the discharge of their functions under Part I of the Act. It is envisaged that Regulations to be made with respect to environmental information will make provision for the issue by the Secretary of State of a Code of Practice applying to the discharge of authorities’ functions under those Regulations.

2. This foreword does not form part of the Code itself.

3. The Government is committed to greater openness in the public sector. The Freedom of Information Act will further this aim by helping to transform the culture of the public sector to one of greater openness, enabling members of the public to question the decisions of public authorities more closely and ensuring that services provided by the public sector are more efficiently and properly delivered. Conformity with the Code will assist this.

4. The Code is a supplement to the provisions in the Act. It is not a substitute for legislation. Public authorities should seek legal advice as considered necessary on general issues relating to the implementation of the Act, or its application to individual cases.

Practice Recommendations

5. Under the provisions of section 47 of the Act, the Information Commissioner has a duty to promote the observance of this Code by public authorities. If it appears to the Commissioner that the practice of a public authority in the exercise of its functions under Part I of the Act does not conform with that proposed in the Code of Practice, he may give to the authority a recommendation, under section 48 (known as a “practice recommendation”), specifying the steps which should, in his opinion, be taken to promote such conformity.

6. A practice recommendation must be given in writing and must refer to the particular provisions of the Code of Practice with which, in the Commissioner’s opinion, the public authority’s practice does not conform. A practice recommendation is simply a recommendation and cannot be directly enforced by the Information Commissioner. However, a failure to comply with a practice recommendation may lead to a failure to comply with the Act. Further, a failure to take account of a practice recommendation may lead to an adverse comment in a report to Parliament by the Commissioner.

7. It should be noted that because the provisions of the Act relating to the general right of access will not be brought into force until 1 January 2005, the Commissioner’s powers to issue practice recommendations in relation to the
handling of individual requests for information under the general right of access will not take effect before that date.

Information Notices
8. The Information Commissioner determines whether the practice of a public authority conforms to the Code. Under section 51 of the Act, he may serve an information notice on the authority, requiring it to provide information relating to its conformity with the Code.

9. Under the provisions of section 54 of the Act, if a public authority fails to comply with an information notice, the Commissioner may certify in writing to the court that the public authority has failed to comply with that notice. The court may then inquire into the matter and, after hearing any witnesses who may be produced against or on behalf of, the public authority, and after hearing any statement that may be offered in defence, deal with the authority as if it had committed a contempt of court.

Duty to provide advice and assistance
10. Section 16 of the Act places a duty on public authorities to provide advice and assistance to applicants. A public authority is deemed to have complied with this duty in any particular case if it has conformed with the Code in relation to the provision of advice and assistance in that case. The duty to assist and advise is enforceable by the Information Commissioner. If a public authority fails in its statutory duty, the Commissioner may issue a decision notice under section 50, or an enforcement notice under section 52.

11. Public authorities should not forget that other Acts of Parliament may be relevant to the way in which authorities provide advice and assistance to applicants or potential applicants, e.g. the Disability Discrimination Act 1995 and the Race Relations Act 1976 (as amended by the Race Relations (Amendment) Act 2000).

MAIN FEATURES OF THE ACT
12. The main features of the Freedom of Information Act 2000 are:

   i. a general right of access to recorded information held by public authorities, subject to certain conditions and exemptions;

   ii. in cases where information is exempted from disclosure, except where an absolute exemption applies, a duty on public authorities to:

       a. inform the applicant whether they hold the information requested, and

       b. communicate the information to him or her,
unless the public interest in maintaining the exemption in question outweighs the public interest in disclosure;

iii. a duty on every public authority to adopt and maintain a scheme, approved by the Commissioner, which relates to the publication of information by the authority, and to publish information in accordance with the scheme. An authority may adopt a model scheme approved by the Commissioner, which may have been prepared by the Commissioner or by other persons;

iv. a new office of Information Commissioner with wide powers to enforce the rights created by the Act and to promote good practice, and a new Information Tribunal;

v. a duty on the Lord Chancellor to promulgate Codes of Practice for guidance on specific issues.

COPYRIGHT

13. Public authorities should be aware that information which is disclosed under the Act may be subject to copyright protection. If an applicant wishes to use any such information in a way that would infringe copyright, for example by making multiple copies, or issuing copies to the public, he or she would require a licence from the copyright holder. HMSO have issued guidance on this subject in relation to Crown Copyright, which is available on HMSO’s website at (http://www.hmso.gov.uk/g-note19.htm) or by contacting HMSO at:

HMSO Licensing Division
St Clements House
2-16 Colegate
Norwich
NR3 1BQ

Tel: 01613 621000
Fax: 01603 723000
e-mail: hmsolicensing@cabinet-office.x.gsi.gov.uk

TRAINING

14. All communications in writing to a public authority, including those transmitted by electronic means, potentially amount to a request for information within the meaning of the Act, and if they do, they must be dealt with in accordance with the provisions of the Act. It is therefore essential that everyone working in a public authority who deals with correspondence, or who otherwise may be required to provide information, is familiar with the requirements of the Act and the Codes of Practice issued under its provisions and takes account of any relevant guidance on good practice
issued by the Commissioner. Authorities should ensure that proper training is provided in this regard.

15. In planning and delivering training authorities should be aware of other provisions affecting the disclosure of information such as Environmental Information Regulations and the Data Protection Act 1998.
CODE OF PRACTICE
ON THE DISCHARGE OF THE FUNCTIONS OF PUBLIC AUTHORITIES
UNDER PART I OF THE FREEDOM OF INFORMATION ACT 2000

The Lord Chancellor, after consulting the Information Commissioner, issues the following Code of Practice pursuant to section 45 of the Act.


I  INTRODUCTION

1. This code of practice outlines to public authorities the practice which it would, in the opinion of the Lord Chancellor, be desirable for them to follow in connection with the discharge of their functions under Part I (Access to information held by public authorities) of the Freedom of Information Act 2000 (“the Act”).

2. The aims of the Code are to:

- facilitate the disclosure of information under the Act by setting out good administrative practice that it is desirable for public authorities to follow when handling requests for information, including, where appropriate, the transfer of a request to a different authority;

- protect the interests of applicants by setting out standards for the provision of advice which it would be good practice to make available to them and to encourage the development of effective means of complaining about decisions taken under the Act;

- ensure that the interests of third parties who may be affected by any decision to disclose information are considered by the authority by setting standards for consultation; and

- ensure that authorities consider the implications for Freedom of Information before agreeing to confidentiality provisions in contracts and accepting information in confidence from a third party more generally.

3. Although there is a statutory duty on the Lord Chancellor to issue the Code, the provisions of the Code themselves do not have statutory force. However, authorities are expected to abide by the Code unless there are good reasons, capable of being justified to the Information Commissioner,
why it would be inappropriate to do so. The statutory requirements for dealing 
with requests for information are contained in the Act and regulations made 
under it and public authorities must comply with these statutory provisions at 
all times. However, section 47 of the Act places a duty on the Information 
Commissioner to promote the following of good practice by public authorities 
(“good practice” includes compliance with the provisions of the Code), and 
section 48 of the Act enables the Information Commissioner to issue a 
“practice recommendation” to a public authority if it appears to him that the 
practice of the authority does not conform with that proposed in the Code. 
Further, section 16 of the Act places a duty on public authorities to provide 
advice and assistance to applicants and potential applicants. Authorities will 
have complied with this duty in any particular case if they have conformed 
with the Code in relation to the provision of advice or assistance in that case.

4. Words and expressions used in this Code have the same meaning as 
the same words and expressions used in the Act.

II THE PROVISION OF ADVICE AND ASSISTANCE TO PERSONS 
MAKING REQUESTS FOR INFORMATION

5. Every public authority should be ready to provide advice and 
assistance, including but not necessarily limited to the steps set out below, to 
those who propose to make, or have made requests to it, in order to facilitate 
their use of the Act. The duty on the public authority is to provide advice and 
assistance “so far as it would be reasonable to expect the authority to do so”. 
Any public authority which conforms with this Code in relation to the provision 
of advice and assistance in any case will be taken to comply with this duty in 
relation to that case.

6. Public authorities should publish their procedures for dealing with 
requests for information. These procedures may include what the public 
authority’s usual procedure will be where it does not hold the information 
requested. (See also VI - “Transferring requests for information”) It may also 
alert potential applicants to the fact that the public authority may need to 
consult other public authorities and/or third parties in order to reach a 
decision on whether the requested information can be released, and 
therefore alert potential applicants that they may wish to be notified before 
any transfer of request or consultation is made and if so, they should say so 
in their applications. (See also VII - “Consultation with third parties”. ) The 
procedures should include an address or addresses (including an e-mail 
address where possible) to which applicants may direct requests for 
information or for assistance. A telephone number should also be provided, 
where possible that of a named individual who can provide assistance. 
These procedures should be referred to in the authority’s publication scheme.

7. Staff working in public authorities in contact with the public should bear 
in mind that not everyone will be aware of the Act, or Regulations made under 
it, and they will need to draw these to the attention of potential applicants who 
appear unaware of them.
8. A request for information under the Act’s general right of access must be made in writing (which includes a request transmitted by electronic means which is received in legible form and is capable of being used for subsequent reference). Where a person is unable to frame their request in writing, the public authority should ensure that appropriate assistance is given to enable that person to make a request for information. Depending on the circumstances, appropriate assistance might include:

- advising the person that another person or agency (such as a Citizens Advice Bureau) may be able to assist them with the application, or make the application on their behalf;

- in exceptional circumstances, offering to take a note of the application over the telephone and then send the note to the applicant for confirmation (in which case the written note of the telephone request, once verified by the applicant and returned, would constitute a written request for information and the statutory time limit for reply would begin when the written confirmation was received).

This list is not exhaustive, and public authorities should be flexible in offering advice and assistance most appropriate to the circumstances of the applicant.

9. Where the applicant does not describe the information sought in a way which would enable the public authority to identify or locate it, or the request is ambiguous, the authority should, as far as practicable, provide assistance to the applicant to enable him or her to describe more clearly the information requested. Authorities should be aware that the aim of providing assistance is to clarify the nature of the information sought, not to determine the aims or motivation of the applicant. Care should be taken not to give the applicant the impression that he or she is obliged to disclose the nature of his or her interest or that he or she will be treated differently if he or she does. It is important that the applicant is contacted as soon as possible, preferably by telephone, fax or e-mail, where more information is needed to clarify what is sought.

10. Appropriate assistance in this instance might include:

- providing an outline of the different kinds of information which might meet the terms of the request;

- providing access to detailed catalogues and indexes, where these are available, to help the applicant ascertain the nature and extent of the information held by the authority;

- providing a general response to the request setting out options for further information which could be provided on request;
This list is not exhaustive, and public authorities should be flexible in offering advice and assistance most appropriate to the circumstances of the applicant.

11. In seeking to clarify what is sought public authorities should bear in mind that applicants cannot reasonably be expected to possess identifiers such as a file reference number, or a description of a particular record, unless this information is made available by the authority for the use of applicants.

12. If, following the provision of such assistance, the applicant still fails to describe the information requested in a way which would enable the authority to identify and locate it, the authority is not expected to seek further clarification. The authority should disclose any information relating to the application which has been successfully identified and found for which it does not wish to claim an exemption. It should also explain to the applicant why it cannot take the request any further and provide details of the authority's complaints procedure and the applicant's rights under section 50 of the Act (see "Complaints Procedure" in section XII below).

13. Where the applicant indicates that he or she is not prepared to pay the fee notified in any fees notice given to the applicant, the authority should consider whether there is any information that may be of interest to the applicant that is available free of charge.

14. Where an authority is not obliged to comply with a request for information because, under section 12(1) and regulations made under section 12(4), the cost of complying would exceed the "appropriate limit" (i.e. cost threshold), and where the public authority is not prepared to comply on a discretionary basis because of the cost of doing so, the authority should consider providing an indication of what information could be provided within the cost ceiling.

15. An authority is not expected to provide assistance to applicants whose requests are vexatious within the meaning of section 14 of the Act.

III HANDLING REQUESTS FOR INFORMATION WHICH APPEAR TO BE PART OF AN ORGANISED CAMPAIGN

16. Where an authority is not required to comply with a number of related requests because, under section 12(1) and regulations made under section 12(4), the cumulative cost of complying with the requests would exceed the "appropriate limit" (i.e. cost threshold) prescribed in Fees Regulations, the authority should consider whether the information could be disclosed in another, more cost-effective, manner. For example, the authority should consider if the information is such that publication on the authority’s website, and a brief notification of the website reference to each applicant, would bring the cost within the appropriate limit.

IV TIMELINESS IN DEALING WITH REQUESTS FOR INFORMATION
17. Public authorities are required to comply with all requests for information promptly and they should not delay responding until the end of the 20 working day period under section 10(1) if the information could reasonably have been provided earlier.

18. Public authorities should aim to make all decisions within 20 working days, including in cases where a public authority needs to consider where the public interest lies in respect of an application for exempt information. However, it is recognised there will be some instances where it will not be possible to deal with such an application within 20 working days. Although there is no statutory time limit on the length of time the authority may take to reach a decision where the public interest must be considered, it must, under section 17(2), give an estimate of the date by which it expects to reach such a decision. In these instances, authorities are expected to give estimates which are realistic and reasonable in the circumstances of the particular case, taking account, for example, of the need to consult third parties where this is necessary. Public authorities are expected to comply with their estimates unless there are good reasons not to. If the public authority exceeds its estimate, it should apologise to the applicant and explain the reason(s) for the delay. If a public authority finds, while considering the public interest, that the estimate given is proving unrealistic, it should keep the applicant informed. Public authorities should keep a record of instances where estimates are exceeded, and where this happens more than occasionally, take steps to identify the problem and rectify it.

V CHARGING FEES

19. The Act does not require charges to be made, but public authorities have discretion to charge applicants a fee in accordance with Fees Regulations made under sections 9, 12 and 13 of the Act in respect of requests made under the general right of access.

20. The Fees Regulations do not apply:

- to material made available under a publication scheme under section 19;

- to information which is reasonably accessible to the applicant by other means within the meaning of the exemption provided for at section 21; or

- where provision is made by or under any enactment as to the fee that may be charged by the public authority for disclosure of the information as provided in sections 9(5) and 13(3) of the Act”.

Public authorities should ensure that any charges they make in cases falling outside those covered by the Fees Regulations are in accordance with any relevant legislation and are within the terms of any relevant guidance which
has been issued or approved by HM Treasury and which is applicable to the public authority, or any relevant guidance issued or approved by the Northern Ireland Department of Finance and Personnel applicable to devolved public bodies in Northern Ireland.

VI TRANSFERRING REQUESTS FOR INFORMATION

21. A request can only be transferred where a public authority receives a request for information which it does not hold, within the meaning of section 3(2) of the Act, but which is held by another public authority. If a public authority in receipt of a request holds some of the information requested, a transfer can only be made in respect of the information it does not hold (but is held by another public authority).

22. Public authorities should bear in mind that "holding" information includes holding a copy of a record produced or supplied by another person or body (but does not extend to holding a record on behalf of another person or body as provided for in section 3(2)(a) of the Act).

23. The authority receiving the initial request must always process it in accordance with the Act in respect of such information relating to the request as it holds. The authority should also advise the applicant that it does not hold part of the requested information, or all of it, whichever applies. But before doing this, the authority must be certain as to the extent of the information relating to the request which it holds itself.

24. If the authority to whom the original request was made believes that some or all of the information requested is held by another public authority, the authority should consider what would be the most helpful way of assisting the applicant with his or her request. In most cases this is likely to involve:

- contacting the applicant and informing him or her that the information requested may be held by another public authority;

- suggesting that the applicant re-applies to the authority which the original authority believes to hold the information;

- providing him or her with contact details for that authority.

25. However, in some cases the authority to whom the original request is made may consider it to be more appropriate to transfer the request to another authority in respect of the information which it does not hold. In such cases, the authority should consult the other authority with a view to ascertaining whether it does hold the information and, if so, consider whether it should transfer the request to it. A request (or part of a request) should not be transferred without confirmation by the second authority that it holds the information.
26. Before transferring a request for information to another authority, the authority should consider:

- whether a transfer is appropriate; and if so
- whether the applicant is likely to have any grounds to object to the transfer;

If the authority reasonably concludes that the applicant is not likely to object, it may transfer the request without going back to the applicant, but should tell him or her it has done so.

27. Where there are reasonable grounds to believe an applicant is likely to object, the authority should only transfer the request to another authority with his or her consent. If the authority is in any doubt, it may prefer contact the applicant with a view to suggesting that he or she makes a new request to the other authority, as in paragraph 23 above.

28. Where a request or part of a request is transferred from one public authority to another, the receiving authority must comply with its obligations under Part I of the Act in the same way as it would for a request that is received direct from an applicant. The time for complying with such a request will be measured from the day that the receiving authority receives the request.

29. All transfers of requests should take place as soon as is practicable, and the applicant should be informed as soon as possible once this has been done.

30. Where a public authority is unable either to advise the applicant which public authority holds, or may hold, the requested information or to facilitate the transfer of the request to another authority (or considers it inappropriate to do so) it should consider what advice, if any, it can provide to the applicant to enable him or her to pursue his or her request.

VII CONSULTATION WITH THIRD PARTIES

31. In some cases the disclosure of information pursuant to a request may affect the legal rights of a third party, for example where information is subject to the common law duty of confidence or where it constitutes “personal data” within the meaning of the Data Protection Act 1998 (“the DPA”). Public authorities must always remember that unless an exemption provided for in the Act applies in relation to any particular information, they will be obliged to disclose that information in response to a request.

32. Where a disclosure of information cannot be made without the consent of a third party (for example, where information has been obtained from a third party and in the circumstances the disclosure of the information without
their consent would constitute an actionable breach of confidence such that the exemption at section 41 of the Act would apply), the authority should consult that third party with a view to seeking their consent to the disclosure, unless such a consultation is not practicable, for example because the third party cannot be located or because the costs of consulting them would be disproportionate.

33. Where information constitutes “personal data” within the meaning of the DPA, public authorities should have regard to section 40 of the Act which makes detailed provision for cases in which a request relates to such information and the interplay between the Act and the DPA in such cases.

34. Where the interests of the third party which may be affected by a disclosure do not give rise to legal rights, consultation may still be appropriate.

35. Consultation should take place where:

- the views of the third party may assist the authority to determine whether an exemption under the Act applies to the information requested; or

- the views of the third party may assist the authority to determine where the public interest lies under section 2 of the Act.

36. A public authority may consider that consultation is not appropriate where the cost of consulting with third parties would be disproportionate. In such cases, the authority should consider what is the most reasonable course of action for it to take in light of the requirements of the Act and the individual circumstances of the request.

37. Consultation will be unnecessary where:

- the public authority does not intend to disclose the information relying on some other legitimate ground under the terms of the Act;

- the views of the third party can have no effect on the decision of the authority, for example, where there is other legislation preventing or requiring the disclosure of this information;

- no exemption applies and so under the Act's provisions, the information must be provided.

38. Where the interests of a number of third parties may be affected by a disclosure and those parties have a representative organisation which can express views on behalf of those parties, the authority may, if it considers consultation appropriate, consider that it would be sufficient to consult that representative organisation. If there is no representative organisation, the
authority may consider that it would be sufficient to consult a representative sample of the third parties in question.

39. The fact that the third party has not responded to consultation does not relieve the authority of its duty to disclose information under the Act, or its duty to reply within the time specified in the Act.

40. In all cases, it is for the public authority, not the third party (or representative of the third party) to determine whether or not information should be disclosed under the Act. A refusal to consent to disclosure by a third party does not, in itself, mean information should be withheld.

VIII FREEDOM OF INFORMATION AND PUBLIC SECTOR CONTRACTS

41. When entering into contracts public authorities should refuse to include contractual terms which purport to restrict the disclosure of information held by the authority and relating to the contract beyond the restrictions permitted by the Act. Public authorities cannot “contract out” of their obligations under the Act. Unless an exemption provided for under the Act is applicable in relation to any particular information, a public authority will be obliged to disclose that information in response to a request, regardless of the terms of any contract.

42. When entering into contracts with non-public authority contractors, public authorities may be under pressure to accept confidentiality clauses so that information relating to the terms of the contract, its value and performance will be exempt from disclosure. Public authorities should reject such clauses wherever possible. Where, exceptionally, it is necessary to include non-disclosure provisions in a contract, an option could be to agree with the contractor a schedule of the contract which clearly identifies information which should not be disclosed. But authorities will need to take care when drawing up any such schedule, and be aware that any restrictions on disclosure provided for could potentially be overridden by their obligations under the Act, as described in the paragraph above.

43 In any event, public authorities should not agree to hold information ‘in confidence’ which is not in fact confidential in nature. Authorities should be aware that the exemption provided for in section 41 only applies if information has been obtained by a public authority from another person, and the disclosure of the information to the public, otherwise than under the Act would constitute a breach of confidence actionable by that, or any other person.

44. Any acceptance of such confidentiality provisions must be for good reasons and capable of being justified to the Commissioner.

45. It is for the public authority to disclose information pursuant to the Act, and not the non-public authority contractor. However, the public authority may wish to protect from disclosure by the contractor, by appropriate contractual terms, information which the authority has provided to the
contractor which would clearly be exempt from disclosure under the Act, by appropriate contractual terms. In order to avoid unnecessary secrecy, any such constraints should be drawn as narrowly as possible, and according to the individual circumstances of the case. Apart from such cases, public authorities should not impose terms of secrecy on contractors.

46. Section 5(1)(b) of the Act empowers the Lord Chancellor to designate as public authorities for the purposes of the Act, persons (or bodies) who provide under a contract made with a public authority, any service whose provision is a function of that authority. Thus, some non-public authority contractors will be regarded as public authorities within the meaning of the Act, although only in respect of the services provided under the contract. As such, and to that extent, the contractor will be required to comply with the Act like any other public authority.

IX ACCEPTING INFORMATION IN CONFIDENCE FROM THIRD PARTIES

47. A public authority should only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of the authority’s functions and it would not otherwise be provided. In addition, public authorities should not agree to hold information received from third parties “in confidence” which is not confidential in nature. Again, acceptance of any confidentiality provisions must be for good reasons, capable of being justified to the Commissioner.

X CONSULTATION WITH DEVOLVED ADMINISTRATIONS

48. Public authorities should consult with the relevant devolved administration before disclosing information provided by or directly concerning that administration, except where:

- the views of the devolved administration can have no effect on the decision of the authority (for example where there is other legislation requiring the disclosure of the information), or there is no applicable exemption so the information must be disclosed under the Act; or

- in the circumstances, consultation would be disproportionate.

49. Similarly, the devolved administrations should consult with the relevant non-devolved public authority before disclosing information provided by or directly concerning that authority, except where the views of the public authority can have no effect on the decision whether to disclose, or where consultation would be disproportionate in the circumstances.

XI REFUSAL OF REQUEST
50. Where a request for information is refused in reliance on an exemption, the Act requires that the authority notifies the applicant which exemption has been claimed, and if it would otherwise not be apparent, why that exemption applies. Public authorities should not (subject to the proviso in section 17(4) i.e. if the statement would involve the disclosure of information which would itself be exempt information) merely paraphrase the wording of the exemption. The Act also requires authorities, when withholding information (other than under an "absolute" exemption), to state the reasons for claiming that the public interest in maintaining the exemption outweighs the public interest in disclosure. Public authorities should specify the public interest factors (for and against disclosure) which they have taken into account before reaching the decision (again, subject to the proviso in section 17(4)).

51. For monitoring purposes public authorities should keep a record of all applications where either all or part of the requested information is withheld. In addition to a record of the numbers of applications involved where information is withheld, senior managers in each public authority need information on each case to determine whether cases are being properly considered, and whether the reasons for refusals are sound. This could be done by requiring all staff who refuse a request for information to forward the details to a central point in the organisation for collation. Details of information on complaints about applications which have been refused (see XII - “Complaints procedure” below) could be collected at the same central point.

XII COMPLAINTS PROCEDURE

52. Each public authority should have a complaints procedure in place by the date that its duties in respect of the publication scheme provisions of the Act come into effect. The complaints procedure may then be used by any person who perceives that the authority is not complying with its publication scheme. If the matter cannot be dealt with satisfactorily on an informal basis, the public authority should inform such persons if approached by them of the details of its internal complaints procedure, and how to contact the Information Commissioner, if the complainant wishes to write to him about the matter. The authority should also explain that although the complainant cannot apply to the Commissioner for a decision under section 50 of the Act, the Commissioner may investigate the matter at his discretion.

53. When the provisions of the Act relating to the general right of access come into force, the complaints procedure will also be required for dealing with complaints from people who consider that their request has not been properly handled, or who are otherwise dissatisfied with the outcome of the consideration of their request, and where the issue is such that it cannot be resolved informally in discussion with the official dealing with the request. If a public authority has failed to introduce a complaints procedure, an applicant is entitled, under the Act, to complain directly to the Commissioner.
54. When communicating any decision made in relation to a request under the Act's general right of access, public authorities are obliged, under section 17(7) of the Act notify the applicant of their rights of complaint. They should provide details of their own complaints procedure, including how to make a complaint and inform the applicant of the right to complain to the Commissioner under section 50 if he or she is still dissatisfied following the authority's review.

55. Any written reply from the applicant (including one transmitted by electronic means) expressing dissatisfaction with an authority's response to a valid request for information should be treated as a complaint, as should any written communication from a person who perceives the authority is not complying with its publication scheme. These communications should be handled in accordance with the authority's complaints procedure, even if, in the case of a request for information under the general right of access, the applicant does not state his or her desire for the authority to review their decision or their handling of the application.

56. The complaints procedure should be a fair and impartial means of dealing with handling problems and reviewing decisions taken pursuant to the Act, including decisions taken about where the public interest lies in respect of exempt information. It should be possible to reverse or otherwise amend decisions previously taken. Complaints procedures should be clear and not unnecessarily bureaucratic. They should be capable of producing a prompt determination of the complaint.

57. Where the complaint concerns a request for information under the general right of access, the review should be handled by a person who was not a party to the original decision, where this is practicable. If this is not possible (for example in a very small public authority), the circumstances should be explained to the applicant. Where the decision on the application was taken by someone in a position where a review cannot realistically be undertaken (e.g. a Minister), the public authority may consider whether to waive the internal review procedure (and inform the applicant if this is what is decided), so that the applicant is free to approach the Commissioner.

58. In all cases, complaints should be acknowledged and the complainant should be informed of the authority's target date for determining the complaint. Where it is apparent that determination of the complaint will take longer than the target time (for example because of the complexity of the particular case), the authority should inform the applicant and explain the reason for the delay. The complainant should always be informed of the outcome of his or her complaint.

59. Authorities may set their own target times for dealing with complaints but these should be reasonable, defensible, and subject to regular review. Each public authority should publish its target times for determining complaints and information as to how successful it is with meeting those targets.
60. Records should be kept of all complaints and of their outcome. Authorities should have procedures in place for monitoring complaints and for reviewing, and, if necessary, amending, procedures for dealing with requests for information where such action is indicated by more than occasional reversals of initial decisions.

61. Where the outcome of a complaint is that information should be disclosed which was previously withheld, the information in question should be disclosed as soon as practicable and the applicant should be informed how soon this will be.

62. Where the outcome of a complaint is that the procedures within an authority have not been properly followed by the authority’s staff, the authority should apologise to the applicant. The authority should also take appropriate steps to prevent similar errors occurring in future.

63. Where the outcome of a complaint is that an initial decision to withhold information is upheld, or is otherwise in the authority’s favour, the applicant should be informed of his or her right to apply to the Commissioner, and be given details of how to make an application, for a decision on whether the request for information has been dealt with in accordance with the requirements of Part I of the Act.