



This Procedure links into the Policy for Information and Records Management.

PD 496 – FORCE PROCEDURE FOR MANAGING FREEDOM OF INFORMATION REQUESTS

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SECTION THREE

3.1 Guidance Statement

The Force is committed to implementing the Freedom of Information Act (FOI). In support of this commitment the Force Information and Records Management Policy Statement and this associated procedure establishes the framework for the introduction and operationalisation of the FOI.

The Deputy Chief Constable is responsible for Freedom of Information within Nottinghamshire Police. The Force Information Manager will be responsible for the implementation of the FOI Act, establishing a functioning system to sustain and improve the management of corporate records.

3.2 Aim of the Force Guidance

The aims of this guidance are;

- To ensure the Force implements the legal requirements of the Freedom of Information Act 2000.
- To provide a framework for dealing with all information requests and subsequent handling and processing of individual requests.
- To provide an appeal procedure as required by the Freedom of Information Act.

3.3 Introduction - Freedom of Information

The Freedom of Information Act 2000 gives a general right of access to all types of recorded information held by public authorities. The Freedom of Information Act 2000 relates to **all** information, not just personal data. The Force therefore needs to be aware of all the information it holds. This includes visual, audio and document based information as well as information stored on computers.

The FOI Team has clear objectives relating to improving records management processes and will work closely with all divisions and departments to determine needs.

3.4 Right of Access

From the 1st January 2005 each individual has a general right of access to information held by the Force. Any person worldwide can make a request for information to a public authority, provided the request is in writing, legible and identifies to whom the response should be sent. The public authority then has 20 working days in which to provide a full response.

The Force has a legal duty to respond to each individual application for Information;

- By confirming whether or not the organisation holds information relevant to the request, and

- Where the information is held, there is a legal obligation to provide it subject to any exemption from disclosure.

3.5 FOI Publication Scheme

The Force is required to adopt and maintain a Publication Scheme that sets out the types of information readily available through the scheme and how they intend to publish it. The Nottinghamshire Police web site contains the Force Publication Scheme at www.nottinghamshire.police.uk.

3.6 Procedure for Managing Freedom of Information Requests

Requests for information subject to FOI legislation will be co-ordinated centrally by the FOI Team, with support from local 'information officers'. All requests must be forwarded to the FOI Team for initial registration and assessment. Where staff are unsure about the type of request received he/she should contact the FOI Team.

Divisions and departments hold the majority of records and information. Local 'information officers' will be contacted by the FOI Team and divisional/departmental staff will be responsible for collating all relevant information required to reply to access requests. This will be forwarded to the FOI Team for further processing. Heads of Department/ division will be responsible ensuring that each department/ division has a nominated 'information officer'. Local 'information officers' will ensure that requests for information issued to divisions/ departments by the FOI Team are processed in accordance with this guidance.

The Force FOI officer will offer advice and support, and monitor performance. Regular updates will be provided to the Head of Corporate Development and Deputy Chief Constable in line with published guidance from Department of Constitutional Affairs.

3.7 Business as Usual vs FOI

FOI does not represent a huge change in the way that the Force deals with information requests. The Force currently deals with a range of requests, including Data Protection and media queries. These can be classed as 'business as usual' and the new duties of FOI will not interrupt current processes.

However the rights of servicing written request for information will need to be managed to set corporate standards, as established in this guidance document.

There are specific criteria relating to an FOI request, as opposed to a 'business as usual' request.

An FOI request must meet at least one of the following criteria;

- Must be made in writing;
- Must identify the information being sought;
- Can be made from anywhere in the world;
- Can be made by an individual or an organisation;
- Can be made by letter, fax or email;
- Be legible;
- Contain the proper name of the applicant; and
- Contain the physical address of the applicant.

To be valid under the Freedom of Information Act, requests do not:

- Have to be written on a special form;
- Need to mention the Act or need to refer to 'Freedom of Information' in any way.

All requests relating to records not owned by Nottinghamshire Police, for example the Nottinghamshire Safer Camera Partnership, will be transferred to the appropriate authority.

3.8 Criteria for Information Requests

Under ACPO Guidance, the following requests should be handled locally as 'business as usual' within Departments and BCUs in-keeping with current business arrangements and normal business processes:

- Information requested by Local Authorities and other statutory agencies in line with Crime and Disorder Protocols (all other LA/Councillor Enquiries through FOI).
- Information requested by other Public Authorities who do not stipulate the request is under the FOI.
- Provision of Court Welfare Reports to Courts for Child Access Enquiries.
- Data Protection Subject Access (Where no 3rd Party information involved).
- Probation Service Welfare Reports/Supply of Pre-cons to Probation Service (inc. Victim Personal Statement Scheme).

For a full list of 'business as usual' requests please see Appendix One.

Where staff are not clear as to how to deal with a written information request he/ she must contact the FOI Officer to clarify.

The information request will be recorded and the FOI officer will start a timed audit trail of the receipt and processing of the request. The FOI Officer will be responsible for recording the timing and receipt of the request and ensuring the 20 working day response time limits are complied with.

The information and the completed response should be forwarded to the FOI Officer so that the information is supplied to the requestor within the 20 day working limit.

Appendix Three is provided for local 'information officers' to record all FOI related activities. This information is necessary to provide evidence of the budgetary requirements of FOI. The Force will assess this information during 2005 to determine any resourcing issues that arise from the full implementation of FOI.

3.9 Links to Data Protection

If a request is for personal information then a requestor's application will be processed under the Data Protection Act 1998. If the request is for information under Data Protection and Freedom of Information the request will be split accordingly for a separate response to be given for each area of the request.

The Force Data Protection Officer is part of the FOI Team and can be contacted via the internal email system.

3.10 Research Issues and FOI

Research activities conducted by the Force will be in support of specified projects, to be determined by the Head of Research. All other applications will be treated as FOI requests and where research will be above the time barrier the Force will decline support unless an internal departments believes that there is value in pursuing this research activity.

For further information relating to the Force's response to formal requests for research please see the related guidance available from the Force Information Manager.

3.11 Referral to ACPO

Where information requests are received that impact on national Police Service issues, for example matters governed by a specific ACPO Policy, the FOI Officer will transfer the request to the National Referral Unit located at Hampshire Constabulary. This unit will process transferred requests and link directly to the FOI team.

3.12 Processing Requests

Once a request is received, it will be assessed for relevant costs, consistent with a pre-determined scale of charges, by the FOI Officer.

The requestor will then be notified of any relevant charges and once the request is confirmed and fee is received, the 20-day period commences. The FOI Officer will be responsible for checking the response for accuracy regarding any relevant exemptions and continuity with previously supplied material, including vexatious or repeat requests.

The FOI Officer will then record an audit trail required under the Act before the response is sent to the requestor. A copy of requests and the relevant responses will be kept by the FOI Officer for future use in the event of appeals or repeat requests.

Written requests for information can be made of any police officer or member of support staff during their normal tour of duty. Any member of staff receiving such a request should immediately send a copy, via fax, direct to the FOI Officer.

The member of staff receiving a request, which they or their section would not normally deal with, should note on the request, before, faxing to the FOI Office, when and how the request was received. It should include their own name, extension number, section and contact telephone number.

Once the request has been faxed, the original should be forwarded to the FOI Officer at HQ Corporate Development.

3.13 Guidance on Information Retrieval

All records supporting the conduct of Force operational and support activities will be maintained within the Police Information and Records Management System(PIRMS). The PIRMS will identify who holds the relevant information required. The FOI Officer, who has access to PIRMS, will forward the request to the holder of the information, requesting the timely and accurate completion of the appropriate forms.

In the first instance, the Force response to a request for information will be researched from the PIRMS. The PIRMS will contain all the individual documents / records that go together to provide the FOI Officer with sufficient information to make decisions on behalf of the Force on progressing that file /incident / report at that time.

The failure to disclose relevant information, which is not subject to exemption, may make the organisation legally liable under the Freedom of Information Act.

An information audit review will be undertaken annually in each formation to provide a continuously updated schedule of all corporate level of information / records.

3.14 FOI and Protective Markings

FOI relates to information and records and NOT DOCUMENTS. The Protective Marking Guidance relates to the secure storage and transit of documents and the clear marking of their respective category. The categorising of documents under the Protective Marking Scheme does not preclude the release of non-exempt information within the documents being subject to disclosure under the FOI. However, this should prompt a critical analysis of the information before disclosure is made.

The information audit is the baseline record of corporate information held by the organisation and is subject to a regular review. This will allow PIRMS to be updated and accessed by the FIO Team and, if required, local information officers.

3.15 FOI Decision-Making

This section contains a brief guide to the decision-making process conducted by the FOI Team when determining what information can be disclosed. This will be the responsibility of the FOI Team with appropriate support from nominated 'information officers'.

3.16 FOI Exemptions

The Freedom of Information Act requires the Force to disclose the relevant information/records to any requestor. However, if there are genuine and substantial reasons for not disclosing all or part of it, the information can be withheld.

There are eight "absolute exemptions" where **all** information falling within these categories is exempt from disclosure per se. However there is a need to impose a public interest test to maintain that absolute exemption i.e. that the public interest in maintaining the exemption outweighs the public interest in disclosing the information. For more information on the 'Public Interest' please see Section 3.17 of this guidance.

There are 15 "conditional exemptions" where the information contained within these categories must be disclosed unless there are specific reasons for not disclosing that **specific** information. However, there is then a requirement to impose a public interest test to maintain that conditional exemption. (i.e. that the public interest in maintaining the exemption outweighs the public interest in disclosing the information).

3.17 Public Interest Test

The “public interest” refers to considerations affecting the good order and functioning of community, government and public service affairs, for the well being of citizens. In general, a public interest consideration is one, which is common to all members of the community (or a substantial part of them), and for their benefit.

The public interest should normally be treated as distinct from matters of purely private or personal interest. Some public interest considerations may however apply for the benefit of individuals, for example

- the public interest in public services respecting privacy principles in their handling of information about the private affairs of citizens
- the public interest in individuals receiving fair treatment, in accordance with the law, in their dealings with public services.

The “public interest” does not however extend to matters, which are merely of interest to the public to know, in the sense of satisfying curiosity or providing amusement.

After applying the above, the exemption for non-disclosure can be claimed. There will be a requirement to justify the application of an exemption claim to the Information Commissioner and/or at an appeal or tribunal hearing. Any information not to be released through claim of exemption must be identified and the specific reason for applying an exemption to the whole or any part of information must be fully documented and included.

3.18 Appeals

Any person who has requested information from the Force and is not satisfied with the reply they receive has a right to appeal for consideration of:

- That disclosure / release has been withheld for the whole or part of information relevant to their request through application of an exemption which they believe is not reasonable in the circumstances.
- That disclosure has been withheld for the whole or part of information relevant to their request because the Force holds “other information” in addition to that which forms the corporate basis of the official response.

On receipt of the request for review of the initial request process, an independent audit officer from Corporate Development will review the information request and assess whether the information request has been satisfactorily processed. The audit officer will record and communicate his/her decision to the information requester within 20 working days.

Should the information requester not be satisfied with this independent audit he/ she can contact the FOI Officer who will record the

appeal. An investigation will take place by the FOI Officer, which will be reported and presented, to the Internal Appeal Board.

The Internal Appeal Board will consist of The Deputy Chief Constable, The Force Solicitor, and a nominated 'information officer'.

3.19 Appeal against Application of an Exemption

The FOI Officer will collate the original request, the corporate information and the corporate response.

The application of exemptions from disclosing part or whole of the corporate information will be discussed with the relevant 'information officer' and other staff providing the response to ensure understanding of the application of the claimed exemption(s). At this time any "time expired exemption" will be considered.

The FOI Officer will prepare and present a report recommending action to be taken in respect of the appeal to the Internal Appeal Board.

The request, the information and response will be forwarded with details of the appeal to the appropriate 'information officer'. An enquiry will be required of anyone who may hold information, relevant to the original request. It will require identification of any information, other than that contained in the originally accessed corporate level information / record / file, which may be held within their formation, by staff.

It is an offence under Section 77 of the Act to fail to disclose, alter, tamper with or destroy any relevant information / record **after** an original request has been received.

If extra information is found it will be forwarded to the FOI Officer for consideration of disclosure, in line with any recommendation which may be made by an 'information officer'.

If no extra information is found the details of how and where a search was made will be detailed and forwarded to the FOI Officer.

The FOI Officer will then prepare a report, with recommendations, with details of the findings for consideration by the Internal Appeal Board.

3.20 Action after Decision of Internal Appeal Board

The result of any appeal will be communicated to the requestor outlining the decision and informing them that should they wish to take the matter further they have recourse for further appeal to the Information Commissioner. The Information Commissioner may serve a Section 54 Enforcement Notice on the Force to disclose further information. This Notice and further legal hearings are open to appeal and use by both the Force and the requestor in order to arrive at a satisfactory conclusion.

If it appears at any time that the appeal is not against the Force but against an individual, then the matter will be immediately referred to the Head of Department Professional Standards for consideration of the most appropriate method of investigation.

SECTION 4 LEGISLATIVE COMPLIANCE STATEMENT

This document has been drafted to comply with the general and specific duties in the Race Relations (Amendment) Act 2000, Data Protection, Freedom of Information Act, European Convention of Human Rights and other legislation relevant to the area of policing such as, Employment Act 2002, Disability Discrimination Act 2004, Sex Discrimination Act 1975 and Employment Relations Act 1999.

Appendices

Appendix One - Information Request; Criteria for Assessment

Extract from National ACPO FOI Manual of Guidance

Under ACPO Guidance, the following requests should be handled locally within Departments and BCUs in-keeping with current business arrangements and normal business processes:

- Information requested by Local Authorities and other statutory agencies in line with Crime and Disorder Protocols (all other LA/Councillor Enquiries through FOI).
- Information requested by other Public Authorities who do not stipulate the request is under the FOI.
- Provision of Court Welfare Reports to Courts for Child access Enquiries.
- Data Protection Subject Access (Where no 3rd Party info involved).
- Probation Service Welfare Reports/Supply of Pre-cons to Probation Service (inc. Victim Personal Statement Scheme).
- RTI Disclosures to Solicitors, Insurance Companies and Loss Adjusters.
- Information Supplied to Insurance Companies and Loss Adjusters under the ACPO/ABI Memorandum of Understanding.
- Information requested by the Passport Agency in line with the Memorandum of Understanding.
- Third Party Prosecutions (where pre-cons are supplied) by statutory agencies such as Inland Revenue, Benefits Agency or Customs and Excise etc.
- Prior-court Disclosures (Criminal Justice Act).
- Disclosure to CPS Lawyers where it involves prospective, ongoing or previous prosecutions.
- Information requested by Courts in relation to ongoing prosecutions.
- CRB Vetting Disclosures.
- Disclosures to Victim Support Service (New Agreement).
- Requests from UK Police Forces in the process of Crime investigation or passing of criminal intelligence.
- Requests from Overseas Police Forces (through Force Intelligence Bureau -Interpol) or SB.
- Requests from the Fire Service under Local Agreements for Joint Investigations of complaints of Arson.
- CICA Requests (Through Crime Managers).
- Request from External Organisations for Personnel References.
- Requests from Occupation Health (where external organisation) about employees working or Force Policies.
- Requests from Trade Unions in relation to complaints investigation.
- Media Enquiries and general enquiries dealt with at local level.

Appendix Two – Decision Making Record Template

1. Is the information readily available/accessible?

2. Are there any statutory reasons for non-disclosure?

3. Would you wish to protect any of the information and why?

4. What level of harm to any individual/the organisation/public?

5. Is there justification to use an exemption for non-disclosure?

6. Which exemptions may be relevant and why?

Exemption	Section	FOR Disclosure	AGAINST Disclosure

7. Does Public Interest Test apply – reasoned application?

8. Is non-disclosure still justified – which exemption(s) will be used and why?

9. Am I satisfied that this information can be released?

10. Chargeable even if nothing released – keep audit trail record

11. Is the type and content of the request one which could be addressed through inclusion of information in the Publication Scheme in the future?

Additional Comments

Appendix Three – FOI Information Retrieval Record

Freedom of information act 2000

To Force Information Manager- Force Headquarters

Date _____

The response to the attached request for information has been processed and produced as follows:-

Work undertaken with _____ **Div./ Dept**

Section (Location) _____

Task	Time(hrs, min)	Post/position	Grade/Rank
Time taken to retrieve relevant materials			
Time taken to identify relevant exemptions			
Time taken to prepare response to request			
Materials used	Quantity of materials		Total cost of materials
Approximate cost of copying materials i.e paper, discs etc.			