

**ISC11D036**

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#### **Issue**

To seek the committee's approval for proposed changes to the Freedom of Information policy.

#### **Recommendation**

Recipients are invited:

- To approve the revised policy.

#### **Resource Implications**

No change to service is required and therefore there is no impact on resources.

#### **Equality and Diversity**

New services will be subject to Equality Impact Assessments as they are implemented.

#### **Timing of decisions**

Once approval is obtained the revised policy can be put into effect and published.

#### **Further Information**

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#### **Background**

The Freedom of Information policy is subject to annual review. This paper contains the proposed changes to the policy, which are clearly highlighted.



# FREEDOM OF INFORMATION ACT POLICY

v. 1.43

~~2 November 2010~~ 23 January 2012

## Document Control Information

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Authors: Dave Palmer  
Quality Assurance: Duncan Westlake

REVISION	DATE	REVISION DESCRIPTION
V 1.0	22 Nov 2004	Information Framework Project Board approved draft, with rev. from SC
V1.1	29 June 2010	Review by Director Information Services and Information Policy Compliance Manager, subsequently adopted by Executive Team.
V1.2	24 September 2010	Revision in light of recommendations of Good Practice & Enforcement Unit of the Information Commissioners Office
V1.3	2 November 2010	Further revisions based on input from the Registrar & Secretary
<u>V1.4</u>	<u>23 January 2012</u>	<u>Minor edits and corrections following internal review by ISD</u>

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## EXECUTIVE SUMMARY

This Policy, based on similar work undertaken by Imperial College, and guided significantly by the provisions of the Secretary of State Code of Practice<sup>1</sup> provides guidance on the handling of requests for information under both the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004.

UEA commits to complying with the Act and all associated Codes of Practice issued pursuant to the Act. This includes a commitment to proper records management processes & procedures.

Not all requests for information will fall within the FOIA; those received as normal course of business will continue to be treated in that manner. It is acknowledged that the Data Protection Act 1998 takes precedence over the FOIA.

Responsibility for the process of dealing with requests for information made under FOIA rests with the Registrar. The Director of Information Services has delegated authority to act on behalf of the Registrar in all aspects of the management and implementation of those processes unless this Policy, or the Registrar, determines otherwise. Primary operational responsibility for the administration of FOIA will rest with the Information Policy and Compliance Manager. The Manager will be assisted by Faculty/Unit Contacts who will be consulted on location of information and applicability of exemptions. Deans of Faculty and the Registrar will be responsible for compliance with FOIA in their Faculties/Divisions.

UEA will encourage receipt of requests via a webpage specifically designed for that purpose. However, UEA will accept all requests and commits to complying with the requirement to assist requesters. UEA will acknowledge receipt of all requests with the ~~UEA Information Policy Officer~~[Information Policy and Compliance Manager](#) cooperating with Faculty/Unit Contacts to locate documents, estimate time of recovery and establish the need to assess fees. A tracking system will be established to record all requests, inclusive of time to respond and outcome.

UEA has twenty (20) working days to respond to any request under the FOIA. The ~~UEA Information Policy and Compliance Manager~~[Information Policy and Compliance Manager](#) will inspect all information and make a determination in relation to possible exemptions from disclosure. He will take into account the need to consult 3<sup>rd</sup> parties where necessary, consult with the Communications Division as appropriate, and will sign off on release of information. Where appropriate, authority for release will be exercised on behalf of the University by the Registrar & Secretary or the Director of Information Services acting on his behalf.

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1

-Secretary of State for Constitutional Affairs' 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. London: HMSO, 2004.

Where any information is not disclosed, UEA will inform the applicant of his/her right of complaint under the UEA complaints procedures, and will also inform the applicant of the reason for non-disclosure.

## ACKNOWLEDGEMENTS

This Policy is substantially based on work undertaken and published by Imperial College, London and UEA wishes to thank Imperial College for permission to liberally use the structure and wording of their Policy as the model for the UEA Policy.

## DEFINITIONS

1. Throughout this document the following terms are used:

- a. "The Act" means the Freedom of Information Act 2000.
- b. "Information Commissioners Office (ICO)" refers to the regulatory body for the Act.
- c. "DPA" means the Data Protection Act 1998, relating to the processing of personal data.
- d. "The EIR" means the Environmental Information Regulations 2004.
- d. "Formal Request" means a written request for information under the provisions of the Act.
- e. "UEA" means the University of East Anglia.

## INTRODUCTION

**2. Purpose of Policy.** This Policy provides guidance on the handling of requests for information submitted under the Freedom of Information Act 2000 ('the Act').

**3. FOIA Obligations on Institutions.** The Act requires that institutions implement and maintain an effective system for responding to requests for information. UEA will comply fully with the Act and it will place in the public domain as much information about its activities as is practicable, and, subject to the exemptions permitted under the Act will make all other information available on request. In particular, it will conform to the Secretary of State's Code of Practice on the Discharge of Public Authorities' Functions.

**4. Secretary of State's Code of Practice.** The Secretary of State's Code of Practice requires UEA to:

- a. Provide advice and assistance to persons making requests for information.
- b. Deal with all requests within 20 working days of receipt of request, charge any fees in accordance with the Fee Regulations and justify any refusal of a request.

c. Assist a person making a request, when the information they are seeking is held by another public authority.

d. Consult with third parties before releasing any data that may affect them.

e. Also consult with third parties where it might assist UEA in determining if and how the information should be released.

f. Have a complaints procedure to deal with any complaints made about its Publication Scheme, or the handling or result of an individual application.

**5. UEA Publication Scheme.** UEA has a publication scheme<sup>2</sup> which details the classes of information that it has chosen to make publicly available, together with details of how the information can be obtained and any associated cost.

## 6. Application of Policy

a. UEA regularly receives requests for information as part of the normal course of business. Members of staff will be expected to continue dealing with these requests as normal. Of course, personal data relating to individuals or confidential information (including commercially confidential information) should never be disclosed in the normal course of business.

b. This Policy relates to requests for information where a member of UEA is unable or unwilling to respond to the request, the request is exceptional or the request is explicitly made under the Act and the information requested is not covered in the UEA's Publication Scheme. All requests of this nature must be passed to the appropriate FOIA Contact as a matter of urgency. The appropriate FOIA Contact will then contact the Information ~~Policy & Compliance~~Policy and Compliance Manager who will consider the request and work with the appropriate faculties or divisions to locate the information. The Information ~~Policy & Compliance~~Policy and Compliance Manager will also consider any exemptions that might apply to releasing the information and determine any associated fees.

**7. Summary of information.** The Act mandates public authorities to provide the information requested, but does not specify the content or form of the information to be provided. Therefore, it is permissible to prepare and provide a summary that contains the requested information.

## DATA PROTECTION

**8. Precedence & Interaction.** The provisions of the Data Protection Act 1998<sup>3</sup> always take precedence over those of the Act. Personal information must always be obtained, processed, stored and disclosed in accordance with the Data Protection Act; even where a request for information has been made under the

<sup>2</sup> [https://www.uea.ac.uk/is/foi/pub\\_sch](https://www.uea.ac.uk/is/foi/pub_sch)

<sup>3</sup> <http://www.legislation.gov.uk/ukpga/1998/29/contents>

provisions of the Act and this precedence is recognised in the Act. The University offers guidance on our obligations under the Data Protection Act<sup>4</sup>.

## ORGANISATION

**9. Summary of Responsibilities.** Responsibility for the processes for dealing with requests for information made under FOIA rests with the Registrar. The Director of Information Services has delegated authority to act on behalf of the Registrar in all aspects of the management and implementation of those processes unless this Policy, or the Registrar, determines otherwise. Primary operational responsibility for the administration of FOIA will rest with the Information Policy and Compliance Manager. The Manager will be assisted by Faculty/Division Contacts who will be consulted on location of information and applicability of exemptions. Deans of Faculty and the Registrar will be responsible for compliance with FOIA in their Faculties/Divisions. A further breakdown of responsibilities can be found in sections 13-17 of this Policy.

## RECORDS MANAGEMENT

**10. Requirement for Records Management.** FOIA provides the public with wide rights of access to UEA's records and therefore requires UEA to implement and maintain a comprehensive records management system. There is a duty under the Secretary of State Code of Practice<sup>5</sup>, issued pursuant to s.46 of the FOIA, to have certain records management policies and practices in place. While it is essential that UEA complies with the Act in implementing a Records Management system, good record keeping practice is important in its own right.

**11. UEA Records Management Commitment.** UEA commits to the creation and maintenance of a systematic and planned approach to the management of all records within the organisation that ensures, from the moment a record is created until its ultimate disposal, that the organisation can control both the quality and quantity of information it generates; can maintain that information in a manner that effectively services its needs and those of its stakeholders; and it can dispose of the information appropriately when it is no longer required. This commitment extends to both paper-based and electronic records.

## RESPONSIBILITIES

**12. The Registrar and Secretary.** The Registrar is the member of the Executive Team with overall responsibility for the processes associated with responding to request for information under the FOIA. The Registrar is kept informed of requests made, and in particular will monitor cases in which the information requested is subject to exemptions. The Registrar will review complaints where the Director of Information Services has been materially involved in any decision which is the subject of a complaint. The Registrar may exceptionally be involved in determining whether or not information is released or is subject to exemptions

<sup>4</sup> <https://www.uea.ac.uk/is/strategies/infregs/dp>

<sup>5</sup> <http://www.justice.gov.uk/guidance/docs/foi-section45-code-of-practice.pdf>

**13. Director of Information Services.** The Director of Information Services, acting on behalf of the Registrar of UEA, has delegated authority for the overall management of FOIA administration and procedures, and their implementation, unless determined otherwise. In circumstances where there are issues surrounding the release of information which cannot be resolved by the Information Policy and Compliance Manager, particularly where the application of exemptions is contentious with those holding the information, the Director will become involved. In exceptional circumstances matters may be referred to the Registrar for resolution, either at the request of the Director or the Registrar.

The Director is also responsible for reporting FOIA activities to the University by way of submission of an Annual Report via the formal UEA Committee structure. The Director has the responsibility for conducting formal internal reviews of release decisions that are appealed (see Annex F), unless the Director has been materially involved in the decision being reviewed, in which case the review will be considered by the Registrar or a Pro Vice-Chancellor.

**14. ~~UEA Information Policy and Compliance Manager~~ Information Policy and Compliance Manager.** The Information Policy and Compliance Manager is responsible for:

- a. Working with Faculties and Units to ensure they are aware of their responsibilities under the Act by way of training, promotion and awareness activities and materials.
- b. Ensuring all requests under the Act are handled in accordance with the all statutory obligations under the Act, the Secretary of State Code of Practice, associated regulations, ICO guidelines, and UEA policies.
- c. Determining at first instance whether the Act is the appropriate legislative regime or mechanism under which to consider any request for information.
- d. Assisting and advising individuals and organisations making requests under the Act.
- e. Ensuring that, in considering requests for information and accepting or refusing them, the public interest is properly assessed and exemptions are properly applied.
- f. Ensuring information is released within the timescales specified within this Policy (see Para. 21).
- g. Maintaining the Publication Scheme.
- h. Keeping the UEA's Freedom of Information Policy under review.
- i. Maintaining the Freedom of Information request management database.
- j. Liaising with UEA Web Services to maintain the UEA Freedom of Information web presence.

k. ~~Alerting~~Alerting the Registrar of cases where it appears that information maybe subject to an exemption.

**15. UEA Faculties/Units.** Within Faculties/Units the persons/units with responsibility for records management are responsible for:

- a. Ensuring that they comply with these procedures and that local arrangements are in place to this end.
- b. Retrieval of information in any form of storage.
- c. Liaising with their own and other Faculties & Units to retrieve information.
- d. Ensuring that adequately trained and aware staff are available to act as FOIA Contacts.

**16. Faculty/Unit FOIA Contacts.** Faculty/Unit Contacts are responsible for:

- a. Ensuring that all requests for information are passed on promptly to the Information Policy and Compliance Manager and systems are in place for checking and, if necessary, redirecting the post and electronic mail of staff absent from UEA.
- b. Assisting the Information Policy and Compliance Manager in locating and retrieving information.
- c. Assisting the ~~UEA~~Information Policy and Compliance ~~and~~Manager in drafting the UEA's response to a request and preparing the information in a suitable form, electronic or physical, for disclosure to the applicant.
- d. Informing the Information Policy and Compliance Manager of changes to any information covered by the Publication Scheme, including changes to URL addresses.

**17. Members of UEA.** Individual Members of UEA are responsible for:

- a. Knowing their responsibilities under the Act.
- b. Ensuring that, when they are absent from UEA for any reason, arrangements are in place for their post and electronic mail to be checked or redirected to someone who can deal with it promptly.
- c. Responding to requests for information within the normal course and scope of their duties, and, were a request is outside this scope, or they are unwilling or unable to do so, referring the request to the Faculty / Unit FOIA Contact.
- d. Seeking advice when they are uncertain on how to respond to a request.

**18. The Vice-Chancellor.** The Vice-Chancellor is the ~~authorised-qualified~~ person under Section 36 of the FOIA who may certify that information is exempt from

disclosure as disclosure would prejudice the free and frank exchange of views, ~~or~~ provision of advice, or the conduct of public affairs.

## RESPONDING TO REQUESTS FOR INFORMATION UNDER THE ACT

### 19. General

a. UEA will encourage use of the web interface as the means by which requests are submitted to UEA but acknowledges that any written communication received at any level of the institution is potentially a FOIA request.

b. All requests for information under the Act not received via the web interface must be directed to the Faculty / Unit FOIA Contact in the first instance. The FOIA Contact will then determine how each request is to be handled in consultation with the Information Policy and Compliance Manager.

c. As with current procedures for managing subject access requests under the DPA, this will usually involve Units and Faculties assisting in retrieving information and supplying it to the ~~UEA~~ Information Policy ~~&~~ and Compliance Manager.

d. The Information Policy and Compliance Manager will then make the UEA's formal response to such requests. ~~A flowchart, outlining the process for dealing with requests, is~~ The process for dealing with requests and helping applicants is described in shown in Annex A.

### 20. Initial Request - Assisting the Applicant

a. There is an obligation on UEA to provide advice and assistance to those making requests under the Act. The duty on UEA is to provide advice and assistance "so far as it would be reasonable to expect [it] to do so".

b. Not all potential applicants will be aware of the Act, or Regulations made under it. Members of UEA receiving requests must draw these to the attention of potential applicants who appear to be unaware of them.

c. A request for information under the Act must be made in writing (which can include e-mail). Where a person is unable to submit a written request, the member of staff must assist the applicant and should refer them to the appropriate FOIA Contact or to the Information Policy ~~&~~ and Compliance Manager.

d. Further details on assisting applicants and dealing with requests can be found in Annex A.

### 21. Initial Request – Initial Actions.

a. Determination of request status - UEA regularly receives requests for information as part of the normal course of business. Members of staff will be expected to continue dealing with these requests as normal. Requests for information where:

(1) a member of UEA is unable or unsure if it is appropriate to respond to the request, or

(2) the request is explicitly made under the Act,

(3) the request is out of the normal course of business AND

(4) the information requested is not covered in the UEA's Publication Scheme, should be considered and treated as formal FOIA requests.

The Information ~~Policy & Compliance~~ Policy and Compliance Manager will also determine whether the request is valid based on the requirements of the Act, and will determine the appropriate legislative regime under which to consider the request.

b. Initial Handling of Request – A valid request will be logged within the request tracking system and a pro forma acknowledgement of the request will be sent to the contact details provided by the requester. The request documentation will be filed in the appropriate FOIA files and the request administration assigned.

c. Identifying If and Where Information is Held

(1) Documents and information stored electronically will be accessed and obtained from networked and individual PCs and work will be done in cooperation with the individuals, Faculties and/or Units concerned. This work will be coordinated by the Faculty/ Unit FOI Contact.

(2) Paper documents will be recovered by staff within the relevant Faculty or Unit.

d. Provision of advice and guidance – Any staff dealing with a request are under an obligation to provide advice and guidance to the requester, either to allow them to provide a valid request, or to further refine their request as appropriate. See Annex A for further information in this regard.

ed. When UEA does not hold the Information - In addition to providing the information which UEA does hold as part of the request it must:

(1) Where it believes another public authority holds some or all of the information, redirect the applicant to enable him or her to pursue his or her request. \_\_\_\_\_

(2) Where it does not know who owns some or all of the information, provides what advice and assistance it can to the applicant to enable him or her to pursue his or her request.

## **22. Timescale for Responding to Requests**

a. The Act requires that replies to requests for information be made within 20 working days.

b. The 20 day period starts the day after a request is received by an institution, regardless of whether the institution recognises that it is, in fact, a request.

c. The Information Policy and Compliance Manager aims to make all decisions within 20 working days, including those where it needs to consider where the public interest lies in respect of an application for exempt information.

d. The Act makes a limited number of provisions for extra time to be taken in responding to a request.

(1) Fees - The timescale is put on hold if, after initial consideration of the request, a fee is requested – see Annex C. The timescale remains on hold whilst UEA is waiting for the fee to be paid.

(2) Applying the Public Interest Test - If the information being sought has to be considered under an exemption to which the public interest test applies then the timescale is extended by a 'reasonable period'. Although there is no statutory time limit on how long the 'reasonable period may be, UEA will, under section 17(2), give an estimate of the date by which we expect to reach such a decision.

(3) Clarification – Where clarification is required from a requester in order to allow the University to identify the information requested, the time for response ~~is~~ will not start ~~or will be 'suspended'~~ until such clarification is received. However, the total amount of time to respond remains at 20 working days. Where such clarification applies only to a portion of the request, the remainder of the request will be processed as per usual practice.

e. In those instances when it is not possible for UEA to deal with an application within 20 working days, we must:

(1) Give an estimate of the date by which we expect to reach such a decision.

(2) Ensure that our estimates 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. A record should be maintained detailing how any such estimates were arrived at.

(3) Comply with our estimates unless there are good reasons not to do so. If we exceed our estimate, we will apologise to the applicant and explain the reason(s) for the delay. If the Information Policy and Compliance Manager finds, while considering the public interest, that the estimate given is proving unrealistic, he/she must keep the applicant informed. A record of instances where estimates are exceeded will be kept, and where this happens more than occasionally, the Information Policy and Compliance Manager will take steps to identify the problem and rectify it.

**23. Retrieval of Requested Information.** The Faculty / Unit contact will:

a. Assist the Information Policy and Compliance Manager to locate and retrieve the information requested.

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b. Advise the Information Policy and Compliance Manager if they believe there are any reasons under the Act why the information should be withheld.

c. Advise the Information Policy and Compliance Manager if they believe there are any reasons why third parties may need to be consulted.

d. A full record of the actions undertaken as part of the retrieval process should be maintained.

**24. Release of requested information.** Unless directed otherwise by the Registrar or the Director of Information Services, the Information Policy and Compliance Manager will respond to all requests. Subject to such approvals as may be required by this Policy, the information will be released where the Information Policy and Compliance Manager is first satisfied that:

a. The release of any information complies with the Data Protection Act 1998.

b. The information requested or any part thereof is not subject to an exemption under the Act.

c. Where appropriate, ~~that~~ the public interest is better served by disclosure, or non-disclosure.

d. Where appropriate, ~~that~~ consultation has taken place with third parties. Further details can be found in Annex B.

e. Where appropriate, ~~has informed~~ the Press Office, Director of Information Services or Registrar has been informed of any information that is being released.

**25. Fee Charging.** UEA has discretion to charge applicants a fee in accordance with the Fees Regulations in respect of requests made under the general right of access. Further details can be found in Annex C.

**26. Refusal of Request.** UEA has the right to refuse the release of information under the Act subject to the following conditions:

a. Where UEA relies on an exemption to refuse a request for information, the Information Policy and Compliance Manager must inform the applicant which exemption has been claimed, and, if it would otherwise not be apparent, why that exemption applies. The refusal notice must not merely paraphrase the wording of the exemption- (unless the statement would involve the disclosure of information which would itself be exempt information).

b. The Act also requires UEA, 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. The Information Policy and Compliance Manager must consider and specify the public interest factors (for and against disclosure) taken into account before reaching the decision. Further details on the exemptions that may be claimed under the Act are available in Annex D.

c. When communicating any decision refusing access made in relation to a request under the Act's general right of access, UEA is obliged to notify the applicant of their rights of complaint. The [UEA Information Policy and Compliance Manager](#) must provide details of the complaints procedure, including how to make a complaint, and must inform the applicant of his or her right to complain to the Information Commissioner if he or she is still dissatisfied following the UEA's review.

**27. Contracts and 3rd Party Confidence.** UEA will only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of its functions and it would not otherwise be provided. In addition, UEA 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. Further details are given in Annex B and in Annex E.

**28. Handling Requests for Information which Appear to be Part of an Organised Campaign.** UEA is not required to comply with a number of related requests where the cumulative cost of complying with the requests would exceed the "appropriate limit" (i.e. cost threshold) prescribed in the Fees Regulations. For further information see Annex C.

In such cases members of staff must consider whether the information could be disclosed in another, more cost-effective, manner. For example, publication on the UEA's website, and a brief notification of the website reference to each applicant, might bring the cost within the appropriate limit.

## COMPLAINTS PROCEDURE

**29. Applicability.** The complaints procedure may be used by any person who considers that UEA is not complying with its Publication Scheme, or who wishes to complain about the handling or outcome of their request. Further details are in Annex F.

## TRACKING & REVIEW OF FOIA ADMINISTRATION

**30. Tracking Requests.** In addition to a record of the numbers of requests and the eventual disposition of each request, senior managers in UEA need information on each case to determine whether cases are being properly considered, and whether the reasons for refusals are sound.

For monitoring purposes the Information Policy and Compliance Manager will keep a record of all requests. This will include requests where all or part of the requested information is withheld. Information to be gathered includes identity and category of requester, categorisation of request itself, exemptions claimed, and any other metadata that is relevant and required for the analysis and administration of the Act.

The Information Policy and Compliance Manager will also keep a record of all complaints and of their outcome.

**31. Disclosure Log.** The Information Policy and Compliance Manager will ensure that a disclosure log<sup>6</sup> of all completed requests is maintained and available for public view on the UEA website. The Information Policy and Compliance Manager will also ensure that any information available in the disclosure log meets the requirements of the Data Protection Act 1998.

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**32. Publication Scheme Updating.** Where information is released, it is good practice to add the released information to the institutional Publication Scheme. The Information Policy and Compliance Manager will encourage Faculties/Units to update the Publication Scheme to include any material that is the subject of repeated requests.

**33. Policy Review Process.** The Policy and Procedures will be reviewed annually by the Information Services and Strategy Committee. The review will also monitor appropriate statistics, complaints and be responsible 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.

## UEA CONTACTS

**334. General enquiries.** Any enquiries about this Policy or for more details on the UEA's Freedom of Information Policy and Model Publication Scheme should be directed to:

Information Policy and Compliance Manager  
University of East Anglia  
[Norwich Research Park](#)  
Norwich  
NR4 7TJ

Tel: 01603 593523  
Fax: 01603 591010  
E-mail: [foi@uea.ac.uk](mailto:foi@uea.ac.uk)

**35. Complaint enquiries.** In the first instance the contact for any complaints in relation to the Publication Scheme or a request for information should be directed to:

Information Policy and Compliance Manager  
University of East Anglia  
[Norwich Research Park](#)  
Norwich  
NR4 7TJ

<sup>6</sup> <http://www.uea.ac.uk/is/foi/disclosure>

Tel: 01603 593523  
Fax: 01603 591010  
E-mail: [foi@uea.ac.uk](mailto:foi@uea.ac.uk)

**365.** Any complainant who considers that their complaint has not been satisfactorily dealt with should address their complaint in writing to:

Director of Information Services  
University of East Anglia  
[Norwich Research Park](#)  
Norwich  
NR4 7TJ

Tel: 01603 592425  
Fax: 01603 591010  
E-mail: [lib.sec@uea.ac.uk](mailto:lib.sec@uea.ac.uk)

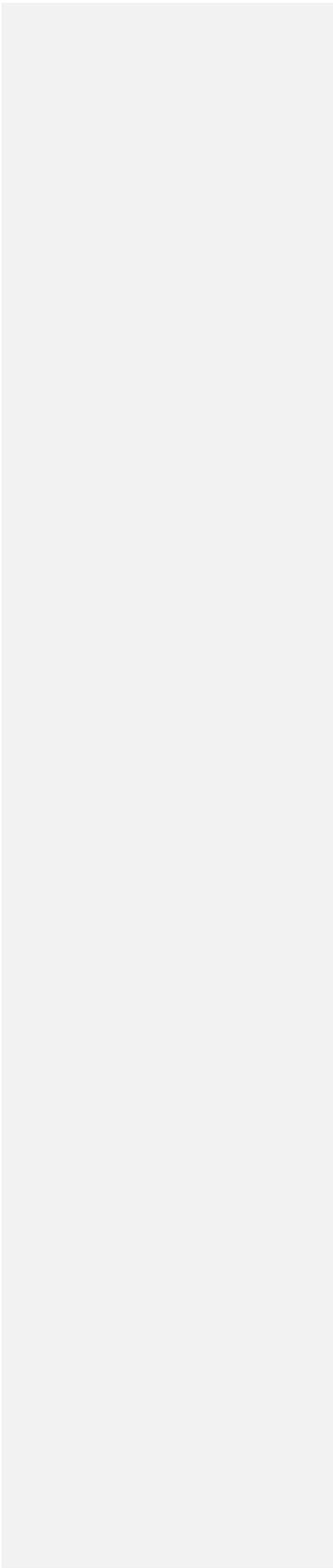
**376. Information Commissioner's Office.** The official regulator for the Freedom of Information Act is:

Information Commissioner  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

Telephone: 0303 123 1113

<http://www.ico.gov.uk/>

# ANNEXES



## ANNEX A – ASSISTING APPLICANTS & DEALING WITH REQUESTS

1. When a person is unable to submit a written request, the Information Policy and Compliance Manager and/or Faculty / Unit Contact will provide further assistance. Depending on the circumstances, appropriate assistance might include:
  - a. Advising the applicant who else might be able to assist them, for example Citizen's Advice Bureau;
  - b. In exceptional circumstances, offering to take a note of the application over the phone and then sending the note to the applicant for confirmation.
2. Where the request is vague or ambiguous UEA is obliged, as far as practicable, to assist the applicant in clarifying the request. The purpose of this is to clarify the nature of the information sought, not to determine the aims or motivation of the applicant. This may include providing:
  - a. An outline of the different kinds of information which might meet the terms of the request;
  - b. A general response to the request setting out options for further information which could be provided on request;
  - c. Access to detailed catalogues and indexes, where available, to help the applicant ascertain the nature and extent of the information held by the authority.
3. If, following the provision of such assistance, the applicant is still unable to describe the information requested in a way that would enable UEA to identify and locate it, UEA is not expected to seek further clarification. It is, however, required to disclose any information that has been successfully identified and explain to the applicant why it cannot take the request any further. It must also provide the applicant with details of the UEA's Complaints Procedure.
4. The University, in line with ICO guidance, will place a time limit on the ability of requesters to respond to a request for clarification; specifically 60 calendar days from the date that the clarification request is sent to a requester. If a response is not received by the deadline, the request will be closed. Any response to a request for clarification received after the expiry of the deadline will neither be acknowledged nor actioned in any manner.
5. Where a fee is to be charged for access to information, and the applicant is not prepared to pay the fee, UEA should nevertheless consider whether there is any information that may be of interest to the applicant that is available free of charge.
6. Where UEA is not obliged to supply the information requested because the cost of doing so would exceed the "appropriate limit" (i.e. cost threshold), and where

UEA is not prepared to meet the additional costs itself, it should nevertheless provide an indication of what information could be provided within the cost ceiling.

7. UEA is not expected to provide assistance to applicants whose requests are deemed vexatious within the meaning of the Act.

## ANNEX B – CONSULTATION WITH THIRD PARTIES

1. 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 DPA. Members of staff must always remember that, unless an exemption provided for in either the DPA or the Act applies in relation to any particular information, it will be obliged to disclose that information in response to a request.

2. In some cases, a disclosure of information cannot be made without the ~~consent~~ input 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). In such instances, members of staff must consult that third party with a view to seeking their ~~consent~~ consent-opinion ~~on~~ 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).

3. Where information constitutes "personal data" within the meaning of the DPA, staff must 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.

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

5. Consultation should take place where:

a. The views of the third party may assist UEA to determine whether an exemption under the Act applies to the information requested ~~or~~

b. The views of the third party may assist UEA to determine where the public interest lies under Section 2 of the Act.

c. The legal rights of the third party would be affected by the disclosure of requested information.

6. Members of staff may consider that consultation is not appropriate where the cost of consulting with third parties would be disproportionate. In such cases, staff must consider what is the most reasonable course of action for them to take

in light of the requirements of the Act and the individual circumstances of the request.

7. Consultation will be unnecessary where:

a. UEA does not intend to disclose the information relying on some other legitimate ground under the terms of the Act.

b. The views of the third party can have no effect on the decision of the authority regarding release, for example, where there is other legislation preventing or requiring the disclosure of this information.

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

8. 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, UEA may, if it considers consultation appropriate, consider that it would be sufficient to consult that representative organisation. If there is no representative organisation, UEA may consider that it would be sufficient to consult a representative sample of the third parties in question.

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

10. In all cases, it is the responsibility of UEA, 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.

## ANNEX C – FEE REGULATIONS

1. In dealing with any request for information under the Act UEA is able to charge fees in accordance with the Freedom of Information Fee Regulations.

2. The Act provides that public authorities have the choice of either charging for, or not complying with expensive requests. If it would cost more than £450 (based on £25/hour per effort over the organisation) for an institution to respond to a request, then the institution need not comply with it. The £450 limit covers the time taken to locate, retrieve, and extract material. It does not cover the time taken to consider whether an exemption applies, to redact exempted information, nor to consider the application of the public interest test.

3. Where the estimated costs exceed the appropriate limit, the University is not obliged to communicate the information to the requester. The University will, however, still confirm or deny whether the information is held unless to do this would in itself exceed the appropriate limit. The University will also, pursuant to

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its obligations to provide advice and guidance, work with the requester to bring the request within the appropriate limit.

4. It is the policy of the University that, where a request exceeds the appropriate limit, the University will not provide the information to the requester in preference to charging a fee for the provision of the information.

5. There is no obligation to comply with the request up to the point at which the appropriate limit has been reached and UEA will not do so.

6. For requests which would cost less than the ceiling, no standard fee may be charged, but the University reserves the right to charge the full cost of disbursements (photocopying, printing and posting).

#### ANNEX D – REFUSAL OF REQUEST

1. Some of the information held by UEA may be regarded as exempt information and will not be provided in response to a request. There are 23 such exemptions. Experience suggests that those most likely to be relevant to the consideration of information held by UEA are:

Section 21: Information is reasonably accessible by other means (e.g. already in the public domain)

Section 22: Information is intended for future publication

Section 21: Disclosure would be prejudicial to international relations

Section 31: Disclosure would prejudice prevention or detection of crime, or apprehension or prosecution of offenders

Section 36: Disclosure would be prejudicial to effective conduct of public affairs

Section 38: Disclosure would be prejudicial to the physical or mental health or safety of any individual

Section 39: Environmental information as defined by the meaning within the Environmental Information Regulations 2004

Section 40: Personal data

Section 41: Information provided in confidence

Section 42: Legally privileged information

Section 43: Disclosure would be prejudicial to commercial interests

2. The exemption in Section 36 applies where, in the reasonable opinion of a qualified person, disclosure would be likely to inhibit the free and frank provision of advice or exchange of views or otherwise prejudice the effective conduct of

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public affairs. The Vice-Chancellor is the qualified person in the case of UEA. In considering an exemption under the terms of Section 36, the Vice-Chancellor may have regard to the views and analysis of those who provided the information in question, of senior colleagues and advisers, and of the Information Policy and Compliance Manager. As only the Vice-Chancellor is qualified to take a decision under Section 36, it follows that such a decision is not open to review by a more senior colleague in the event of a complaint. However, the Vice-Chancellor will be prepared to reconsider any decision in the light of further arguments presented by a complainant.

3. Before relying on an exemption, the Information Policy and Compliance Manager will usually be obliged to consider two further points. First, some of the exemptions can only be claimed if the release of the information would prejudice the purpose to which the exemption relates. Thus information held in connection with law enforcement can only be withheld if its release would, for example, prejudice the prevention or the detection of a crime. Secondly, some of the exemptions also require the Information Policy and Compliance Manager to apply the "public interest" test before making a final decision as to whether or not to release the information. The public interest test requires UEA to consider whether the public interest in withholding the exempt information outweighs the public interest in releasing it.

4. Most of the exemptions will require the Information Policy and Compliance Manager to consider both the test of prejudice and the public interest test. However care must be taken to determine if a specific exemption can be relied upon. It should be noted that only the information to which an exemption applies will be withheld. Thus, if a particular document had been requested which contained some exempt information, only those specific items of exempt information could be withheld. The rest of the document would still have to be released.

5. Where a refusal notice is warranted, the Information ~~Policy & Compliance~~Policy and Compliance Manager will specify each and every exemption that has been claimed in precise detail and will give a full explanation of what information is subject to the exemption and why the exemptions applies to the noted information. If an exemption is based upon prejudice to the interests of any party, the University will define the nature and extent of the prejudice resulting from the release of the information. Where the public interest test is required, the Information ~~Policy & Compliance~~Policy and Compliance Manager will state the reasons why the public interest in non-disclosure outweighs that in favour of disclosure.

6. A record will be kept of all requests where information is withheld and of the reasons for the refusal in each and every case.

7. Any refusal notice will include details of the complaints procedures of the University in relation to requests under the Act, and will advise the requester of their right of subsequent appeal to the Information Commissioner's Office.

8. If information is not held by the University, a refusal notice is not required, but the University will inform the requester that it does not hold the requested information.

## ANNEX E – CONTRACTING PRACTICE

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

2. When entering into contracts with non-public authority contractors, UEA will discourage, wherever possible, the inclusion in any contract confidentiality clauses exempting information relating to the terms of the contract, its value and performance from disclosure. Where, exceptionally, it is necessary to include non-disclosure provisions in a contract, UEA will explore the option of agreeing with the contractor a schedule of the contract that clearly identifies information which should not be disclosed. UEA recognises that, when drawing up any such schedule, any restrictions on disclosure provided for could potentially be overridden by its obligations under the Act.

3. UEA will not agree to hold information 'in confidence' which is not in fact confidential in nature. It should be aware that the exemption provided for in the Act only applies if information has been obtained by UEA from another person, and the disclosure of the information to the public, other than under the Act, would constitute a breach of confidence actionable by that, or any other, person.

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

5. It is for UEA to disclose information pursuant to the Act, and not the body with whom UEA contracts. . However, UEA may wish to protect from disclosure by the contractor, by appropriate contractual terms, information which it has provided to the contractor, which would clearly be exempt from disclosure under the Act. 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, UEA will not impose terms of secrecy on contractors.

6. The University, as standard practice, will take appropriate steps to ensure that any third parties with whom we contract, or who supply the University with information, are aware of the University's duty to comply with the Act, and that therefore information will have to be disclosed upon request unless an exemption applies.

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## ANNEX F – COMPLAINTS PROCEDURE

## Receipt of complaint

1. Any written correspondence from an applicant expressing dissatisfaction with the UEA's response to a valid request for information, or that UEA is not complying with its Publication Scheme, will be treated as a complaint.
2. For a complaint to be valid, it must be received within 60 calendar days of the issuance of the response to the requester. Any complaint received after that date will neither be acknowledged nor actioned in any way. This time limit will be posted on the appropriate University website and will be made clear to the requester in any response letter.
3. Complaints will be handled in accordance with the procedure outlined below, even if the applicant does not state a wish for UEA to review its decision or its handling of the application.
4. Complaints will be acknowledged and the complainant will be informed of the UEA's target date for ~~determining the complaint~~completion of the internal review generated by the complaint. Where it is apparent that ~~determination of the complaint~~the internal review will take longer than the target time (for example because of the complexity of the particular case), UEA will inform the applicant and explain the reason for the delay.
5. UEA's target time for a response is ~~is~~ no longer than twenty (20) working days from the receipt of the complaint, which accords with ICO guidance. UEA will publish its target times for determining complaints. Target times for response to an appeal will be kept under review.
6. Target times for response to ~~an~~ an appeal complaint will be kept under review and the University will follow best practice and ICO guidance in this matter.
7. When acknowledging the complaint, the Information Policy and Compliance Manager will inform the complainant about its internal complaints procedure, and of their right to contact the Information Commissioner should they be dissatisfied with the response to their complaint. The ~~UEA Information Policy Officer~~Information Policy and Compliance Manager will also explain that the complainant cannot apply to the Commissioner for a decision until the UEA's Complaints Procedure has been exhausted, and that the Commissioner will investigate the matter at his or her discretion.

## Outcome of Complaint

8. Where the outcome of ~~a complaint~~an internal review is that information should be disclosed which was previously withheld, the information in question will be disclosed as soon as practicable.
9. Where the outcome of ~~a complaint~~n internal review is that UEA staff ~~has~~ yes not properly followed the procedures within UEA, UEA will apologise to the complainant. UEA will also take appropriate remedial measures to prevent similar errors occurring in future.

10. Where the outcome of ~~a complaint~~an internal review is that an initial decision to withhold information is upheld, or is otherwise in the UEA's favour, the requester will be informed of his or her right to apply to the Information Commissioner, and will 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 the Act.

#### Processing of Complaint

11. General – The University will have in place a procedure for dealing with complaints in relation to the handling of requests under the Act as ~~follows~~set out in Paragraph 12 and 13 below.

12. Informal resolution – There may be instances where the matter can be resolved quickly by the Information Policy and Compliance Manager and without recourse to a formal review; for example providing information inadvertently omitted, or correcting a misunderstanding.

13. Formal review – Where an informal resolution of a complaint is neither possible nor advisable, a formal internal review of the complaint will be conducted.

a. The review will be conducted, where practicable, by a staff member played no material role in the original decision. Additionally, any such person will have sufficient training and knowledge of the Act to undertake the review. In most instances the Director of Information Services will conduct the review. Where appropriate, the review may be undertaken by another senior member of staff; normally the Registrar, a Pro-Vice-Chancellor, or the Vice-Chancellor.

b. The review will consider afresh the reasonableness of the decision and handling of the request.

c. The review will be impartial and will be free to substitute a different decision on a reconsideration of all factors relevant to the issue.

d. The outcome of the review will include the reasons for outcome of the review, details of any changes to the original decision, including precise citation of any exemptions added, ~~and~~ where appropriate an explanation of any reconsideration of the public interest, and advise the complainant of his or her right to appeal the result of the internal review to the Information Commissioner's Office.

e. The outcome of the review will be communicated to the complainant promptly and any action required to be undertaken by the University as a result of the review will be carried out as soon as practicable.

f. The University will keep records of all complaints and their outcome and monitor their own performance in handling complaints.

14. If the applicant feels that his or her complaint has not been dealt with satisfactorily by the Director of Information Services (or appropriate person) then

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they should at this stage contact the ~~Office of the~~ Information Commissioner's ~~Office~~ at:

Information Commissioner  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

Telephone: 0303 123 1113

<http://www.ico.gov.uk/>