Reviewed/Updated: 16/12/25

Approved: February 2026

Nutfield Parish Council

Freedom of Information

What does the Freedom of Information Act 2000 do?

S. 1 of the Freedom of Information Act 2000 ("the 2000 Act") gives a general right of access to all types of recorded information held by public authorities. It also sets out exemptions from that right and places a number of obligations on public authorities. Local councils are subject to the 2000 Act. The Information Commissioner's Office (ICO) is the regulator of the freedom of information regime. The ICO guidance on the 2000 Act is recommended to councils as an up-to-date source of information and **guidance**.

Who is covered by the Act?

A detailed list of public authorities is contained in Schedule 1 of the 2000 Act. This includes local authorities (including local councils and parish meetings), Government departments, the Police and the House of Commons.

Schedule 1 also contains a long list of other public bodies ranging from various official advisory and expert committees to regulators. There is a provision in the 2000 Act for other authorities to be named at a later date and for organisations to be named as public authorities for relevant parts of their work.

What are the rights of requesters?

S.1(1) of the 2000 Act gives applicants two related rights:

- To be told whether the information exists.
- To receive the information.

The right to access information held by public authorities can be exercised by anyone, both natural and legal persons (e.g. a corporate body) worldwide. Applicants are able to exercise their right of access to the information held by public authorities. They are able to ask for information recorded both before and after the Act was passed. That is, it is fully retrospective. The 2000 Act is purpose and motive blind, meaning that councils cannot refuse a request on the basis they do not agree with or like the reason for the request.

How can requests be made?

Applicants are not required to mention the 2000 Act when making a request for information. However, the request must be in writing (including in email form), in a legible form and capable of being used for subsequent reference. Requests sent using pseudonyms are not validly made requests (e.g. Mr Santa Claus, North Pole Lane). Councils should give the benefit of the doubt if unsure.

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How do councils respond to requests?

Before a public authority is required to respond, a request has to satisfy certain conditions, for example it must be in permanent form and must include sufficient information to enable the authority to identify the information requested (s.8 of the 2000 Act and see paragraph 6 above). Authorities do not have to comply with vexatious requests or repeated requests if the authority has recently responded to an identical or substantially similar request from the same person (s.14). The ICO has produced **guidance** on refusing requests. However, public authorities are under a duty to provide advice and assistance to anyone making a request (s.16). The ICO has issued **guidance** on the duty.

Under s.12 of the 2000 Act, an authority is not required to comply with a request if to do so means exceeding an appropriate cost limit as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the 2004 Regulations). This is £450 for local authorities, equivalent to 18 hours' work at £25 per hour regardless of actual hourly rates. Public authorities can only include certain activities when estimating whether responding to a request would breach the £450 cost limit. These are establishing whether information is held, locating and retrieving information and extracting relevant information from the document containing it. Councils that refuse to disclose the requested information can discuss with the requester whether they would like to modify their request so as to reduce costs to below the £450 limit.

A charge may also be made for dealing with a request over the cost limit. The authority should, however, issue a refusal notice stating that it is relying on s.12 of the 2000 Act. A charge may also be made if disbursement costs apply for dealing with a request that comes within the £450 limit e.g. printing and photocopying costs. A fee notice will be issued, and it is the actual cost that can only be charged. The details of the charging regime are set out in ICO guidance on **fees that may be charged when the cost of compliance exceeds the appropriate limit** and **fees that may be charged when the cost of compliance does not exceed the appropriate limit**.

In accordance with s.11 of the 2000 Act, where possible, information must be provided to the applicant in the manner requested, e.g. a requester may request a response by email, or the applicant may ask to inspect the record in person. Applicants are not entitled to information on which of the exemptions in the 2000 Act applies. However, information covered by an exemption must still be released if it is in the public interest to do so - exemptions and the issue of public interest are considered in detail later in this note.

S.10 of the 2000 Act requires public authorities to respond to requests not covered by an exemption promptly but no later than 20 working days following its receipt. The first day starts the day after a valid request is received by the authority. The date on which a request is received is the day on which it arrives or, if this is not a working day, the first working day following its arrival. Non-working days include weekends and public holidays anywhere in the UK. Councils cannot rely on their staff being part-time and not seeing the request in terms of the clock starting. It is advisable for councils to have

a central address/ contact point to which FOI requests can be made, e.g., an email address not linked to any individual who is routinely monitored by the council. The “promptly” point is important to bear in mind as it is not just a case of waiting until the last day to respond, and the ICO may not look favourably on such a delay.

A public authority may ask for further information which it reasonably requires in order to identify and locate the information requested. Where a public authority issues a fees notice (see paragraph 9 above) in order to comply with s.1 (1) of the 2000 Act, the applicant has three months to pay. If the payment is not made within this time, the public authority does not have to answer the request (s.9 (2) of the 2000 Act).

Where an authority decides not to release the information requested because it considers an exemption applies, it must give reasons for its decision and must inform the applicant if they have a right to complain to the authority about the handling of the request (e.g. through complaints or other procedure and give details of the procedure) or state that there is no procedure, and of their right to complain to the ICO (s.17 of the 2000 Act). In cases where an exemption applies, but an authority is then required to release the information because it determines it is in the public interest to do so, it must disclose the information requested within a reasonable timescale.

Councils must not delete information further to receiving a request, even when they believe they can do so in reliance of an exemption (e.g. s.22 of the 2000 Act - information intended for future publication).

What are the exemptions under the 2000 Act, and what is the public interest?

In the majority of cases where an exemption applies to some or all of the information requested, the public authority has to consider whether it must override the exemption because it is in the public interest to release the information. The public interest test involves considering the circumstances of each particular case and the exemption that covers the information. The balance lies in favour of disclosure, in that information can only be withheld if the public interest in withholding it is greater that the public interest in releasing it.

The Exemptions

Whilst the 2000 Act creates a general right of access to information held by public bodies, it then sets out specific exemptions where that right is either disapplied or qualified. The categories of exemption are described below.

Apart from vexatious or repeated requests, to which an authority need not respond, there are two general categories of exemptions - those where, even though an exemption exists, a public authority has a duty to consider whether disclosure is required in the public interest and those where there is no duty to consider the public interest.

Exemptions where the public interest test applies (“qualified exemptions”)

The majority of exemptions fall into this category:

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- s.22 — Information intended for future publication
- s.24 — National security (other than information supplied by or relating to named security organisations, where the duty to disclose in the public interest does not arise)
- s.26 — Defence
- s.27 — International relations
- s.28 — Relations within the United Kingdom
- s.29 — The economy
- s.30 — Investigations and proceedings conducted by public authorities
- s.31 — Law enforcement
- s.33 — Audit Functions
- s.35 — Formulation of government policy
- s.36 — Prejudice to effective conduct of public affairs (except information held by the House of Commons or the House of Lords)
- s.37 — Communications with Her Majesty, etc and honours
- s.38 — Health and Safety
- s.39 — Environmental information
- s.40 — Personal information of a third party (i.e. not data relating to the requester). An exemption will stand or fall on whether disclosure of the information to a member of the public would be unfair, taking into account all the circumstances involved, in particular how the information was obtained, the likely expectations of the data subject regarding the disclosure of the information; the effect which disclosure would have on the data subject; and the public interest in disclosure of the information. If disclosure of personal data to a member of the public would be unfair, then the request is likely to need to be refused under the 2000 Act insofar as it relates to that personal data.
- s.42 — Legal Professional Privilege (communications between a lawyer and their client)
- s.43 — Commercial interests

To establish that the information falls within the terms of a qualified exemption, it is necessary to consider whether the public interest nevertheless requires that the information should be released. The central question to consider is whether the public interest in withholding the information outweighs the public interest in disclosing the information.

Where a public authority considers that the public interest in withholding the information requested outweighs the public interest in releasing it, the authority must inform the applicant of its reasons

unless doing so would mean releasing the exempt information. The powers of the ICO with respect to disclosures in the public interest are considered later in this note.

The absolute exemptions

There are exemptions where, if the exemption applies, it is not necessary to go on to consider disclosure in the public interest:

- s.21 — Information accessible to applicant by other means
- s.23 — Information supplied by, or relating to, bodies dealing with security matters
- s.32 — Court records
- s.34 — Parliamentary privilege
- s.36 — Prejudice to effective conduct of public affairs (only applies to information held by the House of Commons or House of Lords)
- s.40 — Personal information - where the applicant is the subject of the information, the applicant already has the right of subject access under the Data Protection Act 2018 (the 2018 Act); where the information concerns a third party and disclosure would breach one of the data protection principles, or other conditions as set out in s.40 apply
- s.41 — Information provided in confidence
- s.44 — Prohibitions on disclosure where disclosure is prohibited by an enactment or would constitute contempt of court

What other responsibilities do public authorities have?

Publication schemes:

The 2000 Act places a duty on public authorities to adopt and maintain publication schemes which must be approved by the ICO. Such schemes must set out:

- The types of information the authority publishes.
- The manner in which the information is published.
- Details of any charges.

Once approved, it will be up to the authority to decide how to publish its scheme. S.19 of the 2000 Act requires public authorities to review publication schemes periodically. In deciding what information should be included in the scheme, public authorities must have regard for the public interest in allowing access to information and the public interest in the publication of reasons for decisions made by the authority. Schemes may either be designated for particular bodies or may be generic. **A model publication scheme** applies to local councils and parish meetings without a separate parish council.

Reviewed/Updated: 16/12/25

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Information is exempt from the 2000 Act if it is accessible to the applicant by other means (see s.21 of the 2000 Act). Where information is already accessible because it is covered by the authority's publication scheme, the authority will not then be required to provide the information in response to an individual request.

Codes of Practice

The government issues a Code of Practice under s.45 of the 2000 Act. This provides guidance to public authorities on the discharge of their functions and responsibilities under Part I (Access to information held by public authorities) of the 2000 Act. The **latest 2018 Code of Practice**.

The Information Commissioner also has a statutory duty to promote good practice by public authorities, including following this Code of Practice. The Commissioner can issue practice recommendations where he or she considers that public authorities have not conformed with the guidance set out in the Code. The Commissioner can also refer to non-compliance with the Code in decision and enforcement notices.

What does the ICO do?

The ICO is an independent regulator, and the Information Commissioner is a public official who reports directly to Parliament. In respect of the 2000 Act, the Commissioner has a duty to:

- Approve/revoke publication schemes.
- Promote good practice.
- Promote public authorities' compliance with the 2000 Act.
- Disseminate information and give advice about the 2000 Act.
- Assess, with the consent of a public authority, whether a public authority is following good practice.
- Report annually to parliament.

Enforcement

A person who has made a request for information may apply to the ICO for a decision as to whether the request has been dealt with by the public authority according to the 2000 Act. In response, the ICO may serve a decision notice on the public authority and applicant, setting out any steps that the public authority is required to take in order to comply with their duties (s.50 of the 2000 Act). The Commissioner also has the power to serve information notices and enforcement notices on public authorities (s.51 and s.52 of the 2000 Act).

In certain circumstances, when notices are served, for example, on a government department or a public authority specifically designated by the Secretary of State, the ICO can issue a decision or enforcement notice requiring disclosure of information in the public interest. However, this may be subject to an executive override. In such a case, the public authority has 20 days from receipt of the

notice to obtain a signed certificate from a Cabinet Minister overriding the ICO's notice (s.53 of the 2000 Act).

Appeals

There is no right of appeal against the Ministerial Certificate although it may be possible to mount a Judicial Review claim against the minister in respect of it. Decision, information and enforcement notices may be appealed to the independent Information Tribunal (s.57 of the 2000 Act). When serving a notice of any kind, the Information Commissioner must at the same time explain the appeals mechanism.

Where a notice has been served earlier, the complainant or the public authority may appeal to the Information Tribunal, which may uphold, overturn or vary the notice (s.58 of the 2000 Act).

What is the relationship between freedom of information and data protection?

The 2000 Act extends access rights set out under the 2018 Act (incorporating the UK GDPR). A request by an individual for information about themselves will be exempt under the 2000 Act and will continue to be handled as a subject access request under the 2018 Act. In certain circumstances such a request may involve the release of associated third party information.

Where an applicant specifically requests information about a third party, the request falls within the remit of the 2000 Act. However, the authority must apply the data protection principles when considering the disclosure of information relating to living individuals. An authority must not release third party information, if to do so would mean breaching one of the above principles.

What other advice and guidance is available for local councils?

Individual enquiries in aspects of the 2000 Act can be addressed to the ICO via their helpline (0303 123 1113) or chat function on their **website**. The postal address is Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF.

NOTE: This advice note was supplied by NALC and last updated on 1 April 2021.

The information and commentary in the note do not constitute legal advice for any individual case or matter. For specific advice on your circumstances, we strongly encourage you to seek tailored legal advice.