

The Campaign for Freedom of Information

Suite 102, 16 Baldwins Gardens, London EC1N 7RJ
Tel: 020 7831 7477
Fax: 020 7831 7461
Email: admin@cfoi.demon.co.uk
Web: www.cfoi.org.uk



FURTHER COMMENTS ON THE DRAFT 'GOOD PRACTICE' CODE

Further comments the draft code of practice
to be issued by the Lord Chancellor
under section 45 of the Freedom of Information Act 2000

11 March 2002

Hon. President: Godfrey Bradman
Co-Chairs: James Cornford, Neil McIntosh
Director: Maurice Frankel

Parliamentary Co-Chairs: Helen Jackson MP
Archy Kirkwood MP
Richard Shepherd MP

Further comments on the draft “good practice” code

Since our original response to the draft code, we have learnt that a more recent version of the code is available.¹ This note addresses some of the changes made in the revised version.

1. Response time for requests

We are concerned to see that the revised draft of the code drops one of the most important elements of the previous draft, dealing with the time allowed for responding to requests. If adopted, this change would break an explicit ministerial promise made to Parliament during the Act’s passage.

The Act requires authorities to decide whether information is exempt within 20 working days, but allows the decision on whether to disclose exempt information on public interest grounds to be taken within a longer “reasonable” period. The absence of a specific time limit for these decisions is a serious flaw which removes any firm incentive on authorities to deal with requests promptly and offers those inclined to be obstructive a perfect, and unfortunately, lawful, means of frustrating applicants.

We therefore welcomed the fact that the previous draft advised authorities not to take decisions over a two-stage process but to

“aim to make all decisions within 20 working days, wherever possible”.²

We were dismayed to see that this statement has been omitted from the subsequent draft.

The lack of an explicit timetable for public interest decisions was repeatedly criticised during the Bill’s Parliamentary passage. Finally, the Home Office minister Lord Bassam gave this unequivocal commitment at Lords report stage:

I should say that the Government remain of the view that wherever possible all information should be disclosed within a 20-day time period. That too -- I give a commitment -- will be reflected in the Secretary of State's code.³

¹ The version obtained from the Internet was dated 26/3/01 but a more recent version dated 12/12/01 has since been circulated in hard copy for comment.

² Draft of 26/3/01 paragraph 13

³ Hansard, Lords Debates, 14 Nov 2000, Column 190

The revised draft, if adopted, would break this commitment. We assume that is not the Government's intention and urge the department to reinstate the original provision.

The revised draft also states that an estimate of the time needed for a response should, where necessary, take account "of the need to consult third parties".⁴ Some authorities might assume from this statement that, where a third party needs to be consulted about a request, the 20 day time limit does not apply. The guidance should emphasise that a decision on whether third party information is *exempt* must be taken within 20 working days, even if consultation with that party is required.

2. Fees

It is not clear what is meant by the statement in paragraph 15 that the Fees Regulations do not apply to:

"information which is exempt information under Part II of the Act."

If the intention is that authorities should not charge fees if a request does not lead to any disclosure, we would strongly welcome this.

Although the draft Fees Regulations envisage relatively modest fees, these could still be abused.

For example, an authority which is asked for information which it is not sure it holds could propose to carry out an exhaustive search, involving sufficient hours to charge the maximum fee of £55. The Act would allow it to insist on advance payment of this fee – and would allow the authority to retain it even if no information is found, or all the information proved to be exempt.

We think the guidance should advise authorities to normally:

- not charge where no information is actually provided;
- not ask for a fee in advance unless they have reason to believe that the applicant is likely to refuse payment
- as part of their duty to advise and assist (para 9) be ready to inform applicants what information they can obtain without incurring any costs at all.

⁴ Paragraph 13

3. Monitoring data

In our original response, we criticised the absence of any suggestion that authorities should monitor their handling of requests. We are pleased to note that the Scottish Executive has now accepted that the corresponding code of practice under the Scottish FOI Bill should explicitly deal with statistics. The Bill has now been amended to require the code to make provision for:

“the collection and recording by the authorities of statistics as respects the discharge by them of their functions under this Act.”⁵

We hope that UK authorities will also be required to collect and publish proper statistics about their handling of requests.

⁵ Freedom of Information (Scotland) Bill, Section 60(2)(f)