Top Tips for Responding to FOI Requests

Overview
Applying the FOI Act in practice can be challenging, while it seeks to promote access to information held by FOI bodies, the Act also strikes a balance. It provides an extensive facility to gain access to information, it also ensures that this is not unduly inconvenient or disruptive and that only truly appropriate disclosures will occur in the public interest.

There is much in the FOI Act that enables FOI bodies to lighten the burden, make the process manageable, and to ensure that sensitive information is not disclosed.

1. Communicate and Know
What’s in Play
• Ensure there is a valid request for a properly FOIable record held or controlled by you in your FOIable capacity, or by a service-provider
• Clarify the request with the requester. Make it more focused and easy to administer
• See if the requester is happy to exclude any information from records
• See if the requester is happy for you to give an alternative form of access
• Liaise with colleagues internally and service providers externally to identify records and information-sensitivities
• Consult with third parties - informally and formally, including persons affected generally and section 38 consultees
• Warn the requester of the factual or legal limitations that may apply to any records released

2. Take your Time
• Extend the time for notifying a decision, by up to 4 weeks, where the request is voluminous, or you are dealing with many related requests
• Note the built-in time extension in a section 38 consultation process
• Defer access to records until a date you specify, where section16 applies - this includes certain records not covered by the deliberative process exemption
• Don’t process requests or applications until any fees or deposits due have been paid

3. Suit Yourself
• Charge the mandatory and appropriate fees and deposits
• Use the administrative grounds for refusal, where they apply
• Require payment of any previously-unpaid fee or deposit
• Grant access to records in a way that you find most efficient or avoids a legal wrong or harm identified by the FOI Act from occurring
• Prepare an alternative copy of the record in a form you find appropriate to avoid including exempt information and give access to that copy

Dublin, London
& New York
4. Publish and Disclose
- Prepare and publish a publication scheme under section 8. Include routinely FOIable records
- Consider publishing information in general
- Consider publishing information in a requested record within 6 weeks
- Publish information you are otherwise required by law to publish
- Make records available for inspection, purchase or removal free of charge
- Refuse requests on the administrative grounds related to existing publication, intended publication or general availability

5. Be Careful
- Forensically apply exemptions and exclusions to refuse access to records on grounds of age, class, source or ability to cause harm
- Consider whether existence or non-existence ought to be disclosed
- Consider whether individual non-disclosure requirements trump the FOI Act in your case
- Ensure delegations are in place for decision-makers and that the right people are involved
- Watch time-limits
- Avoid inadvertently disclosing sensitive information when refusing access
- Ensure that records released do not contain exempt or sensitive information
- Do not destroy or alter records after receipt of a request, without lawful excuse

What others say about us...

Our Public Sector team
"well-tuned into public sector requirements"

Our Public Sector team
"an unrivalled level of service", "an excellent understanding of the legislation".

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