



**DEPARTMENT FOR WORK AND PENSIONS**

*from the Secretary of State*

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The Rt Hon Lord Irvine of Lairg  
Lord Chancellor  
House of Lords  
SW1A 0PW

*CS: CO EC*

07 December 2001

Dear Lord Chancellor,

**GUIDANCE ON HANDLING SUBJECT ACCESS REQUESTS UNDER SECTION 7 OF THE DATA PROTECTION ACT 1998**

Thank you for copying me your letter to the Prime Minister, dated 6 November, in which you provide draft guidance on handling Subject Access Requests under Section 7 of the Data Protection Act 1998.

This Department's business centres around the collection, processing and storage of personal data, collected predominantly from the customer but in some cases from third parties. Following the introduction of the Act in 1998 the Department implemented robust and efficient processes for identifying, processing and monitoring Subject Access Requests to enable us to conduct our business effectively while adhering fully with the legislation. As a result of these processes, DWP has not experienced the problems encountered by other Departments in handling requests for personal records.

The volume and nature of Subject Access Requests to DWP would make cross Whitehall consultation, where we wish to go beyond the strict interpretation of the Act, both impractical and bureaucratic. The Benefits Agency (BA) and the Child Support Agency (CSA) received a total of 2813 Subject Access Requests in 2000 and 2720 to date in 2001. Many of the CSA requests require careful consideration as there are two parties to the procedure, both providing information which enables an assessment to be made. CSA alone had 1811 requests in 2000, and 1871 requests to the end of October 2001. The nature of



Recycled Paper



the Department's work means that consideration of whether information is exempt is best conducted by officials with an in-depth knowledge of the business. If the consultation process were to be adopted there would be a significant danger of failing to meet the 40 day deadline which would attract the attention of the Information Commissioner who may criticise the new process.

This Department has always advocated a culture of being as open as possible. We find that sometimes, difficult decisions are easier to explain by being open. Your letter moves away from this position which I would find difficult. Each request for information is considered under both the Data Protection Act and the Open Government Code. This approach will place us in an advantageous position when access rights under FOI are introduced in January 2005. Your letter seems to be suggesting moving away from this approach, a position which DWP would not support.

For these reasons, I would not wish to see DWP constrained by the new guidance to be any the less open than it is now. Nor would it be workable for DWP to adopt the proposals for cross Whitehall consideration for thousands of individual cases. I am content for other Departments to take a restrictive stance if they feel that best suits their business, but as this Department's work is centred around the relationship with our customers we would not wish to prejudice this by introducing a more restrictive regime than the one already successfully operated.

I am copying this letter to the Prime Minister, members of CRP(FOI) and Sir Richard Wilson.

Yours sincerely

pe ALISTAIR DARLING  
(Approved by the Secretary of State  
and signed in his absence)

FACSIMILE TRANSMISSION



*Jonathan*  
*You asked something*  
*go Uldor this*

*(F)*

TO:	Clair Sumner (020 7839 9044)
FROM:	Nick Goodwin (Tel 020 7219 6790) LORD CHANCELLOR'S PRIVATE OFFICE HOUSE OF LORDS SW1A OPW FAX NO. 020 7 219 4711
NO. OF PAGES:	3 (including this page)
DATE:	15 <sup>th</sup> February 2002

Clair,

As discussed by phone, the letter is fairly self-explanatory.

Officials are presently discussing timing issues with FCO and Cabinet Office and it is anticipated that the Lord Chancellor will write again on this subject in a week or so.

Nick

**IF YOU DO NOT RECEIVE A CLEAR TRANSMISSION  
OR ANY OF THE PAGES ARE MISSING,  
PLEASE TELEPHONE 020 7219 2185 /4785**



HOUSE OF LORDS,  
LONDON SW1A 0PW

The Rt Hon John Prescott MP  
Deputy Prime minister and  
First Secretary of State  
Cabinet Office  
LONDON  
SW1A 2AS

5 December 2001

Dear *John*,

**Review of the Public Records Acts and the need for new National Archives legislation**

The Prime Minister has set out four principles of public sector reform, of which the first was 'high national standards and full accountability'.

In the light of this, I set out below a series of issues for you to consider against the background of the *Modernising Government* initiative, the 2004 target for electronic records management across government, and the Government Policy on Archives, which I agreed and published in 1999.

I am seeking your agreement for our officials to carry out work on a proposal to review the present Public Records Acts and assess the need for new National Archives legislation. The outcomes of this work would be:

- a) legislation to replace the Public Records Act 1958 and to remedy critical deficiencies in the management of electronic records in central government;
- b) Investigation, with a view to legislative change if required, of the current provision for other public sector records with particular regard to managing and preserving electronic records.
- c) A programme of work to review the national framework for archival provision, arrangements for good record management and accountability and the integration of the various strands of information policy in the public sector; and to incorporate these aspects within legislative proposals if judged necessary.

I should be grateful for replies by Friday 11 January 2002.

This work would begin at once with the necessary discussions within government. It would then lead to the issue of a public consultation paper, by the summer of 2002. Depending on the outcome

of the work within government, this paper would propose essential legislation to accommodate the new requirements for managing and archiving electronic records. It might also propose legislation extending to the wider public sector with a view to a new National Archives Act giving consistency to our national provision in the important field of records management and archiving.

All I am seeking at present is your agreement to carry out the initial work within central government. I will consult you again, with my proposals, before any wider consultation either publicly or across regional and local government.

This is an important subject, both necessary in terms of how we deal with electronic material in the information age, and offering significant potential benefits besides. So I hope I might have your agreement to go ahead.

I am copying this letter to the Prime Minister, Jack Straw, members of DA, Sir Richard Wilson and First Parliamentary Counsel.

Yours *ever,*

*Denis*

CS  
FCSV  
SW  
MT  
JON

140517

FCS/01/176LORD CHANCELLOR

Guidance on Handling Subject Access Requests Under Section 7 of the Data  
Protection Act 1998

1. In your letter to the Prime Minister of 6 November you sought views on proposed guidance on handling subject access requests under the Data Protection Act 1998.
2. I agree that central guidance is essential to ensure a consistent approach across Whitehall, and I have no difficulty with the robust approach which you commend.
3. I am concerned, however, that this will not solve all the problems that the access rights in the DPA create for the FCO. In particular, it will not eliminate the risk of being obliged under the Act to disclose information that would harm international relations. The FCO and our posts deal on a daily basis with individuals, eg in other governments, whose views affect UK interests overseas. The ability to comment freely and in confidence on such individuals, and analyse their motives, is crucial to confidential diplomacy and the FCO's global business.
4. The measures set out in the guidance are helpful but limited and, as we move towards the 2004 electronic records target, their usefulness will decrease. I am also unsure to what extent we will be able to rely on the guidance's interpretation of Section 33(4): it seems implausible that the 'research/historical' exemption could be successfully invoked in respect of documents only 3 months old.
5. I therefore believe that an amendment to the Act, to exempt information whose disclosure would harm international relations is essential: this seems the only safe way of ensuring that our interests overseas are adequately protected and would parallel



the exemption against third party disclosure in the Freedom of Information Act. I think we shall have to come back to this before very long.

6. Copies of this minute go to the Prime Minister, members of CRP(FOI) and Sir Richard Wilson.

A handwritten signature in cursive script, appearing to read "Jack Straw".

(JACK STRAW)

Foreign and Commonwealth Office

5 December 2001



*The Rt Hon Lord Macdonald of Tradeston CBE*

Minister for the Cabinet Office &  
Chancellor of the Duchy of Lancaster

*file* *CS*  
*qsv*

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**RESTRICTED - POLICY**

The Rt Hon The Lord Irvine of Lairg  
Lord Chancellor  
House of Lords  
London  
SW1A 0PW

**30** November 2001

*Den Demy*

**GUIDANCE ON HANDLING SUBJECT ACCESS REQUESTS UNDER SECTION 7  
OF THE DATA PROTECTION ACT 1998**

Thank you for copying to me your letter of 6 November 2001 to the Prime Minister seeking agreement to adopt and adhere to the Guidance on handling subject access requests under the Data Protection Act.

I very much welcome the guidance attached to your letter and in particular the need to encourage a consistent approach to the way subject access requests are handled. I also share your view that Departments should not depart from the guidance unilaterally without good reason. I support the proposal that Departments wishing to adopt a different interpretation in specific cases should first consult with other Departments through, for example, the Data Protection Practitioners' Group.

As to the guidance itself we have one or two points of detail, for instance concerning contact points, which my officials will take up with yours.

I am copying this letter to the Prime Minister, members of CRP(FOI) and to Sir Richard Wilson.

*Gus*  
*Gus*

**GUS MACDONALD**





MINISTRY OF DEFENCE  
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SECRETARY OF STATE

*130/11*

MO 23/2C

29 November 2001

*f*  
*CS*  
*ec Dm*  
*AW*  
*MT*

*Dear Jerry,*

Your letter of 6 November to the Prime Minister sought agreement to guidance on handling subject access requests under the Data Protection Act 1998.

I welcome the provision of central guidance for Departments. Much of it is very helpful. I do, however, see difficulties in trying to implement the specific guidance on structured manual records and minimal compliance for personnel files. Some of our files will be highly structured and fall within the strict interpretation that is suggested, but others will not. In responding to subject access requests from current or former employees, I believe it would create problems not to disclose information contained on their personnel files simply because of the way the file is structured. The information on a named personnel file, even where filed only in date order, will have been accessible for employment purposes and it would, therefore, be difficult to argue that it is not accessible in response to a subject access request. This will be even more difficult if an individual can point more specifically to the requested information – to the type of data and its date. My department's general experience is that the refusal to supply data in these cases generates complaints about "cover-ups" and causes more problems than disclosure.

We will, of course, make full use of the exemptions which apply, including the exemption for national security. It should then be possible to avoid complaints to the Information Commissioner which cannot be defended by reference to the Act and our particular record holdings on particular individuals.

The Rt Hon The Lord Irvine of Lairg  
 Lord Chancellor

As the guidance recognises, Departments may structure their manual records in different ways, but each Department will only be able to defend its actions by reference to its own records and not by reference to the practice of other Departments. But where an individual makes a request to several Departments, and particularly where dealing with the request appears likely to raise difficult or sensitive issues, my officials will certainly consult other Departments as appropriate through the machinery of the Data Protection Practitioners' Group.

I am copying this letter to the Prime Minister, members of CRP(FOI), and Sir Richard Wilson.

Yours sincerely,



**GEOFFREY HOON**



f  
HOUSE OF LORDS,  
LONDON SW1A 0PW

The Right Honourable Tony Blair  
Prime Minister  
10 Downing Street  
London  
SW1A 2AA

CS

NTX

29 Faxed  
November 2001

Dear Tony,

### IMPLEMENTATION OF THE FREEDOM OF INFORMATION ACT 2000

I wrote to you and colleagues on 31 October seeking agreement to the timetable for the implementation of the Freedom of Information Act, and subsequently wrote on 2 November seeking agreement to announce the plan in reply to an oral question from Lord Goodhart on 13 November. Colleagues were content and I announced the plan as proposed.

There were two options for implementing the Act. The first was to roll out the Act sector by sector, starting with central government. The publication scheme provisions would be implemented first, with the individual right of access for each sector coming into force some months later. The second option was to roll out the publication scheme provisions only, sector by sector, and when this was complete, implement the individual right of access for all authorities simultaneously. The option preferred was the second and that option was proposed to colleagues by letter from me of 31 October, proposing incremental roll out sector by sector followed by the individual right of access coming into force across the board in January 2005. The second approach should be justified on the basis that it allows greater time for preparation across above 75,000 bodies covered by the Act - an Act which applies not only prospectively to a future paper, but retrospectively to past paper. We should rely on the two year period between Royal Consent and implementation to enable what is now widely accepted as a successful preparation for the implementation of the Human Rights Act.

I subsequently wrote on 2 November proposing that I announce the implementation plan via my answer to an oral question tabled by Lord Goodhart for answer in the Lords on 13 November. I also proposed that Michael Wills answer an arranged written question in the Commons in substantially the same terms on the same day, which he did.

I received replies from your office and from David Blunkett, Alan Milburn, Geoff Hoon, Estelle Morris, Tessa Jowell and Denis MacShane, who were all content with the proposal.

Patricia Hewitt asked that publicly owned companies, which were not mentioned in the timetable, be brought into scope for commencement of the publication scheme provisions in June 2004. I see no difficulty with that proposal.

Andrew Smith asked for an assurance that the draft of the Code of Practice which goes to the Information Commissioner for statutory consultation will include a form of words, agreed between officials, referring to the guidance for charging for information published by the Treasury. I can give that assurance and also make clear that we intend to go to statutory consultation by the end of the year.

Alistair Darling was concerned that if the Scottish Freedom of Information legislation were to come into force before the UK Act, central guidance on sending sensitive material, including Ministerial correspondence, to the Scottish Executive and other Scottish public authorities would be available. I shall ensure that such guidance is drafted.

I understood that, given these assurances, Patricia, Andrew and Alistair were content for the announcement to be made.

I am copying this letter to members of CRP(FOI) and to Sir Richard Wilson.

Yours *ever,*

*Devy*

RESTRICTED

FROM THE SECRETARY OF STATE

CS  
cc JJM



The Rt Hon the Lord Irvine of Lairg  
Lord Chancellor  
House of Lords  
Palace of Westminster  
LONDON  
SW1A 0PW

Department for Transport,  
Local Government and the Regions

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Our Ref: SB/024327/01

*Dear Derry,*

*28 November 2001*

**GUIDANCE ON HANDLING SUBJECT ACCESS REQUESTS UNDER SECTION 7 OF THE DATA PROTECTION ACT 1998**

Thank you for copying me your letter of 6 November to the Prime Minister providing guidance on the handling of subject access requests under section 7 of the Data Protection Act 1998.

I agree that this important legislation would benefit from a joint approach across Government Departments in the handling of such requests and warmly welcome your initiative.

I have seen Patricia Hewitt's reply and very much agree with her that the guidance you have provided covers a lot of new ground in what is as yet an untested area. One or two areas of the guidance would benefit from clarification and to this end my officials are ready to discuss further and in closer detail what is being proposed here in the already established cross-Departmental Data Protection fora.

I am copying this reply to the Prime Minister, CRP(FoI), and to Sir Richard Wilson.

*Yours,*  
*Stephen*

**STEPHEN BYERS**



**DEFRA**

Department for  
Environment,  
Food & Rural Affairs

Corporate Support Division  
Room 534, Nobel House, 17 Smith Square, London SW1P 3JR  
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(F)

Joan McNaughton  
Lord Chancellor's Department  
Selborne House  
54-60 Victoria Street  
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SW1E 6QW

23 DEC 2001 / SAS ca Alan Coghill

Lee Hughes | Jonathan  
Spence

23 November 2001

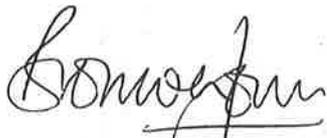
Dear Joan

**SENIOR GROUP ON FREEDOM OF INFORMATION AND DATA  
PROTECTION**

1. Following the Lord Chancellor's announcement on 13 November of a revised timetable for implementation of the Freedom of Information Act 2000, I am writing to flag up a couple of points.
2. Firstly, I'd like to remind colleagues that, while the timetable for the implementation of the individual right of access to information under FOI has now been set for January 2005, the timetable for introduction of new Environmental Information Regulations (EIR), for which DEFRA has lead responsibility, is still set for early to mid 2002.
3. New regulations are necessary so that the UK can implement the Aarhus Convention. The access arrangements in the Convention are more demanding than those in the 1992 regime; time limits for response are shorter; a public interest test is applied to all exemptions; and there is more of a customer focus with the applicant being able to specify how they would like the information. Departments will need to prepare for implementation of these new Regulations. Michael Meacher may well write to Ministerial colleagues emphasising this point.
4. Secondly, given that the Data Protection Act 1998 has only just been fully implemented, new Environmental Information Regulations are just around the corner, and publication schemes for central Government will need to be approved by this time next year, I very much welcome the fact that the Senior Group is continuing to meet. This will ensure a co-ordinated Government approach to all access to information issues.

5. It would be extremely helpful if the Information Commissioner were invited to a meeting of the Senior Group in the near future. This would allow us to discuss the approach the Commissioner is taking, and the approach Government as a whole should take, towards publication schemes in the lead up to full implementation of the FOI Act in 2005.

Yours sincerely

A handwritten signature in cursive script, appearing to read 'Bronwen Jones', written in black ink.

**BRONWEN JONES**  
Head of Corporate Support Division



r 27/11

Jsw

HOUSE OF LORDS  
LONDON SW1A 0PW

cc CS

Permanent Secretary and  
Clerk of the Crown in Chancery  
Sir Hayden Phillips KCB

Tel. 0207-219 3246  
Fax. 0207-219 2075

Sir Richard Wilson GCB  
Cabinet Office  
70 Whitehall  
London  
SW1A 2AS

22<sup>nd</sup> November 2001

Freedom of Information Act: Publication Schemes

I promised to let you and colleagues have a note about the arrangements for co-ordinating our approach to the publication schemes which we are required to apply under the provisions of the Freedom of Information Act. According to the schedule announced by the Lord Chancellor on 13 November, Government Departments will have to apply these schemes from November next year.

We need to co-ordinate our approach to these schemes and to adopt a common policy as to classes of information which it is appropriate to include in a scheme. The Senior Group on Data Protection and Freedom of Information will oversee the formulation of our policy on this, though the detail will be worked out in the Freedom of Information practitioners' group. The next meetings of these groups will be on 7 December and 14 January respectively and I should be grateful if colleagues would ensure that their Departments are represented at these meetings.

In developing our policy on publication schemes it is important that we recognise that:

- compliance with the scheme will be a statutory duty; we cannot change our mind about the classes of information to be included in the scheme after it has been agreed, without the consent of the Information Commissioner;
- we are not obliged to include within the scheme any information which would be exempt from disclosure if sought under the individual right of application;
- we must include in publication schemes any document or series of documents for which we make a charge, otherwise we shall lose the ability to make a charge other than under the fees regulations to be made under the provisions of the Act.

I am copying this letter to Wednesday morning colleagues.



LORD CHANCELLOR'S DEPARTMENT  
CIVIL JUSTICE AND LEGAL SERVICES DIRECTORATE  
FREEDOM OF INFORMATION AND DATA PROTECTION DIVISION  
50 QUEEN ANNE'S GATE  
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Pat Dixon  
No 10

Your fax 020 7925 0918

Our fax 020 7273 2684

Date 19/11/01

*Clar -  
I'm not planning  
to go, you?  
for 20/11.  
Pdr  
Yes I would  
do  
Clar*

This is just a reminder to those wishing to attend the meeting of the Senior Group on Freedom of Information and Data Protection to please let me know, as soon as possible.

Many Thanks

Christina Clark

2 pages

*cc: Vanessa B ✓ 21/11  
pls put in my  
diary + tell them*

*DFID → publication scheme \**

Gov Com

*Inf Asses by now - hyl level (why) of not published  
MUDA version mdrd*

*Publication scheme - to agree classes of info  
which will be made available on request*



To: Members of the Senior Group on Freedom of Information and Data Protection cc Lee Hughes  
(by email where possible)

From: Nancy Hey  
**Lord Chancellor's Department**  
Freedom of Information & Data Protection Division  
Room 921, Queen Anne's Gate  
020 7273 3604

30 October 2001

**MEETING OF THE SENIOR GROUP ON FREEDOM OF INFORMATION  
AND DATA PROTECTION**

1. I am writing to invite you to the next meeting of the Senior Group on Freedom of Information and Data Protection. The next meeting is arranged for Friday 7<sup>th</sup> December from 10 –12am at Selborne House, 54- 60 Victoria Street, SW1E 6QW.
2. Please could you let me know if you are unable to attend and if you wish to send a representative, the name of the representative, so that I can make arrangements for refreshments and visitors passes.
3. The agenda and papers for the meeting will be circulated in due course.

**Nancy Hey**  
Secretariat to Senior Group

Senior Group on Freedom of Information & Data Protection

next meeting: Mon

Meeting: Friday 7 December, 10 a.m.

Venue: 7th Floor Conference Room Selborne House 54-60 Victoria Street

AGENDA

1. Agree Minutes of last meeting
2. Matters arising from minutes (not addressed elsewhere)
3. Draft Guidance: Subject Access Requests Paper by LCD - SG (FOI/DP) (8) Dewis + Lee \* PRO - 2004 target
4. Update on review of Data Protection Act Oral report by LCD -> long haul \* Autumn 2000 - post implementation appraisal. Renew \* EC Directive - member states get amended. Commission failed to deliver report - likely Autumn 2002
5. Update on Implementation of Freedom of Information Act Oral report by LCD Jan 2005 \* Council of Europe Convention \*
6. Role and Function of Practitioner's Group on Freedom of Information Paper by LCD - SG (FOI/DP) (9) -> TOR
7. Co-ordination of Government View on Publication Schemes Paper by LCD - SG (FOI/DP) (10) Subject access \* Sweden - word process
8. Any Other Business

Info Com. Market Wills  
public sector  
Dand Market

Info Commission \* -> 1998 arrangements - addressed exemptions. Find review of Nancy Hey (Secretary, SG (FoI/DP) subject access - taken forward by LCD. exceptions, procedure

DPA -> unstructured files -> disproporionate

# RESTRICTED - POLICY

## SG - FREEDOM OF INFORMATION AND DATA PROTECTION GROUP

**MINUTES** of a Meeting held in  
The Conference Room, Central Buildings, Matthew Parker Street  
On **WEDNESDAY 5 SEPTEMBER 2001** at **2.30pm**

### PRESENT

Jonathan Tross  
Cabinet Office  
(In the Chair)

Bronwen Jones  
Department for the Environment, Food  
and Rural Affairs

Jane Alexander  
Ministry of Defence

Heather Yasamee  
Foreign and Commonwealth Office

Christopher Hum  
Foreign and Commonwealth Office

Lee Hughes  
Lord Chancellor's Department

Joan MacNaughton  
Lord Chancellor's Department

Nancy Hey  
Lord Chancellor's Department

Jenny Rowe  
Lord Chancellor's Department

Kevin Doherty  
Department for Education and Skills

Paul Heron  
Department for Culture, Media and  
Sport

Linda Wishart  
Department of Health

Jonathan Phillips  
Department of Trade and Industry

Cecil Millar  
Northern Ireland Executive

Peter Gregory  
National Assembly for Wales

John Oxenford  
HM Customs & Excise

Ajit Philipose  
Inland Revenue

Stephen Penneck  
Office for National Statistics

## **RESTRICTED - POLICY**

Rosemary Jeffreys  
Treasury Solicitors Department

Clare Sumner  
No 10 Policy Unit

Dennis Morris  
Cabinet Office

Duncan Simpson  
Public Records Office

Kevin Nicholls  
Cabinet Office

### **SECRETARIES**

Judith Simpson  
Phil Hamshare

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LEGISLATION: THE POTENTIAL FOR REFORM OF THE DPA

CIVIL SERVICE PERSONNEL RECORDS

## RESTRICTED - POLICY

### Item 1: Draft Guidance on subject access requests under the DPA

Speaking to SG (FoI/DP) (5), the LORD CHANCELLOR'S DEPARTMENT (LCD) said it was not the intention to open a detailed debate on the guidance, but rather to look to the Group for consideration of the broad themes that should underpin the document.

The point of the guidance was to look at the difficult cases, where the subject access request went beyond mere personal circumstances, but intruded into areas of public policy, because the individual making the request was a public personality and/or was concerned in policy issues.

The guidance was not final and no version could be so. In the area where Counsel's opinion was awaited, it was hoped that it would be forthcoming within a week or so (papers were now with his Junior).

Three areas of the guidance merited particular mention. The first concerned manual files, where Counsel's opinion supported a clear line that only a limited range of files were covered, where, in addition to the clearly identifiable individual, there was an internal structure to facilitate extraction of information. This line supported that taken by Ministers during the passage of the legislation. The Lord Chancellor was supportive of a robust line in defence of the interpretation that had been outlined to Parliament. This line would need to be reconsidered once the FoI Act had been implemented but, for the moment, the line that only a limited range of files were covered should be considered the best opinion.

The second particular area was that of open-ended requests, where Departments ought not to be hesitant in asking for information that an applicant could reasonably be asked for, such as dates and subjects where the applicant might have an involvement. However, this could not justify seeking information an applicant could not possibly have, such as details of the Departmental filing structure.

The third area was that of "deleted E mails", where the guidance argued, in line with Counsel's opinion, that, where these had been so removed from an individual's control that processing could not take place, then these were not covered by the legislation.

In discussion, the following points were made:-

- (a) it would not be easy to assert that a manual file that was sufficient to identify an individual for management purposes was, nonetheless, insufficiently structured to fall within the confines of the DPA;
- (b) subject access requests needed to be answered only to the extent that they answered the questions asked. There was no need to volunteer further information, should the Department the subject of the request hold further personal information on areas unrelated to the request;

## RESTRICTED - POLICY

- (c) it was important to remember that E mails could form part of the historical record, so deletion needed to be consistent with Departmental policies consistent with effective records management;
- (d) the guidance was generally helpful but could not make up for problems inherent in the legislation;
- (e) an integral part of the process would be to get Ministerial agreement to this approach.

LCD set out their proposals for handling the distribution of the guidance, so that it would acquire authoritative status. The final draft of the guidance would be cleared with the Lord Chancellor and with No.10. It would then be annexed to a letter from Sir Hayden Phillips to Sir Richard Wilson, outlining the LCD strategy for dealing with the DPA issue. If it would be helpful, the guidance could be cleared by CRP (Fol).

Summing up, the CHAIRMAN said that the Group clearly welcomed the guidance in principle. The guidance would not give rise to cases being handled on a "least risk" scenario. Each individual judgement would be based on the principles on the guidance, openly acknowledged as the best judgement in the circumstances but with risk that the courts might ultimately not support the judgement. There was a clear need for the current draft of the guidance to be reconsidered, so that the message was consistent with such an approach. The guidance might usefully be redrafted to make clearer difference in treatment between the routine cases and those with a policy/public personality dimension.

### **Action points:-**

- 1. LCD to redraft guidance and Departments to send any detailed comments to LCD.**
- 2. LCD officials to pursue clearance of final draft with the Lord Chancellor and No 10.**
- 3. Once cleared as in 2. above, Sir Hayden Phillips to write to Sir Richard Wilson, outlining the LCD strategy to deal with the issue of subject access under the DPA.**

Item 2: Draft guidance on Departmental practice in implementing the DPA

Speaking to SG (Fol/DP) (6), the CABINET OFFICE said that they wished to concentrate attention on principles, not engage in a detailed examination, which would be more appropriate to members of the Data Protection Practitioners' Group (DPPG).

The key consideration was the need to achieve even more effective handling of across-Whitehall requests. Strides had been made since the first requests had been received early in 2000. However, it was clear that failures of co-ordination did still occur and that justified further efforts to ensure that such requests were handled in a manner that could avoid embarrassment and avoid an apparent inability to handle cases in a coherent, consistent manner.

Summing up, the Chairman said that the Group recognised the need for good co-ordination across Whitehall and endorsed the approach to handling access requests which might effect a number of departments. The guidance would also be circulated by LCD highlighting it as Whitehall-wide expected best practice for such requests.

## RESTRICTED - POLICY

### Item 3: Legislation – the potential for reform of the DPA

Speaking to SG (Fol/DP) (7), the LORD CHANCELLOR'S DEPARTMENT (LCD) said that the fundamental message of the paper was that room for legislative manoeuvre was limited. The only options that appeared at all feasible were some increases in the subject access exemptions, with a fresh exemption for international relations and some widening of the existing exemption for national security.

More radical options were theoretically possible, such as replacing the current Act by one that incorporated the Directive direct into UK law or the creation of a two-tier regime. The first could not be recommended, because it placed great power of interpretation in the hands of the Information Commissioner and, ultimately, the courts. The second suggestion was likely to prove unworkable in practice.

Given the limitations caused by the current Directive, consideration of prospects for a reformed Directive had been undertaken. However, given the fact that the Commission had sole power of initiative on this, and were likely to pursue an agenda opposed to that of the UK Government, prospects here for change in the direction the Government might want were dim.

Even the more "realistic" options for domestic legislation would face heavy opposition, because they acted to remove rights that had now been granted by legislation. The Lord Chancellor was certainly of the view that the better option was to test how far robust guidance could be used as the way of overcoming the problems that the DPA had hitherto caused.

Nonetheless, LCD recognised that some parts of Whitehall were unconvinced of the efficacy of that approach. Any such Department was invited, on the back of the letter from Sir Hayden Phillips to Sir Richard Wilson, to write to Sir Hayden, setting out the case for further legislation.

In discussion, there was a welcome for the acceptance that some limited change in the areas of national security and international relations was possible. The current situation was causing difficulties, which could be exacerbated by an upcoming decision of the House of Lords on the scope of "national security".

Summing up, the CHAIRMAN noted that there was an acceptance that legislative change had to surmount the hurdle of presentational and political difficulty, and so was an option fraught with difficulty. This meant that the Group accepted that the room for action was limited. He repeated that Departments were free to seek LCD agreement to legislative changes.

**Action point:-**

- 1. Any Department that wished to argue for a change in the DPA should write, at Perm Sec level, to Sir Hayden Phillips, following his letter to Sir Richard Wilson, outlining their case for a change. The letter could also usefully include any views from the Department on handling the presentational aspects of new legislation.**

Item 4: Civil Service personnel records

Introducing this item, the CHAIRMAN said the ending of the manual record exemption on 24 October 2001 had clear implication for Civil Service personnel records. The draft guidance on this was supportive of a policy position favouring a more open regime in respect of personnel records. This guidance, once finalised, would be put before Sir Richard Wilson. The key question for him would be the applicability of this in relation to SCS appointments.

In discussion, the point was made that, had the kind of guidance on subject access requests and on recommended best practice been in preparation at the time that early policy decisions on personnel records practices were made, the latter might well have taken a very different turn.

Summing up, the CHAIRMAN said that the problem in relation to personnel records was another offshoot of the poor preparation that Whitehall had shown in respect of the DPA (in marked contrast to that for the HRA, which was an acknowledged success in planning). It was now clearly necessary for some coherence to run from DPA planning to personnel issues. This indicated a need for the involvement of those senior managers with DPA responsibility to liaise with Personnel Director colleagues to ensure that there was appropriate consistency in the two areas.

**Action Point:**

- 1. Members of the Group to consider intervention with colleagues on Departmental Boards with personnel responsibilities to ensure consistency between the general approach on DPA matters with those on Civil Service personnel issues.**

Any other business

(i) The Chairman invited the LORD CHANCELLOR'S DEPARTMENT to inform the meeting on the latest position regarding the timetable for the implementation of the Freedom of Information Act 2000.

LCD stated that a letter had been sent in April by the then Home Secretary to members of CRP (Fol) seeking approval for his plans for implementation of the Fol Act. This letter had been superseded by the General Election and the change of Ministerial responsibility. The Lord Chancellor was still considering the matter, but it was hoped that he would be in a position to write around to colleagues early next month with updated proposals for implementation. It was clear that it would be better to have plans for implementation in the public domain soon after Parliament returned from Recess.

In the meantime, LCD urged that Departments should press on with activity to ensure Departments were prepared for the Act, particularly in respect of their publication schemes. LCD also reiterated the offer made at the March meeting, to hold awareness sessions.

The Group noted the position.

(ii) Concluding the business of the meeting, the CHAIRMAN told the participants that the responsibility for convening and supporting the Senior Group would henceforward pass to LCD, with the position of Chair passing to Joan MacNaughton. The Constitution Secretariat of the Cabinet Office was being dissolved and the remaining aspects of the Cabinet Office co-ordinating role of Constitution Secretariat would (probably, but not yet certainly) pass to Central Secretariat.

**Cabinet Office**  
**September 2001.**

SENIOR GROUP ON FREEDOM OF INFORMATION AND DATA PROTECTION

DRAFT GUIDANCE: SUBJECT ACCESS REQUESTS UNDER THE DATA PROTECTION ACT

Paper by the Lord Chancellor's Department

1. The Lord Chancellor wrote to colleagues on 6 November seeking agreement to the guidance (latest version attached at A) on handling subject access requests made under section 7 of the Data Protection Act 1998. The guidance was drafted following comments from this group that a publishable statement of handling policy should be available for central government, and the guidance is consistent with legal opinions received.
2. The Lord Chancellor sought comments by 30 November. At the time of writing this paper not all Departments had submitted their replies - though all replies received so far have been supportive. An oral update will be given at the meeting. Subject to any views from colleagues we would expect Departments to adopt the guidance when finally published.
3. It is important to note that the guidance is intended to set out the minimum that Departments need to do in order to comply with the legislation. Departments may wish to disclose more information than is required by law. It is not our intention to prevent further information being disclosed, but in order to preserve the ability of other Departments to reach their own views about their own disclosure policy any disclosure not strictly required by the legislation should be clearly identified as non-statutory and the Data Protection Practitioners' Group should be consulted to ensure that the interests of other Departments are not harmed by such disclosures.
4. The Group is invited to note the situation.

Lord Chancellor's Department  
November 2001

**SENIOR GROUP ON FOI AND DATA PROTECTION**

**The Role and Function of the Practitioner's Group on Freedom of Information**

**Paper by the Lord Chancellor's Department**

The attached paper sets out draft terms of reference for the Practitioner's Group on Freedom of Information.

The Group are invited to endorse the terms of reference.

## **Role and Function of the Practitioner's Group on Freedom of Information**

Each public authority has responsibility for the implementing the Freedom of Information Act in its own organisation. Therefore, the Practitioner's Group has been set up to address common issues related to the implementation of the FOI Act across Whitehall. In doing this it will help to ensure a consistent approach to FOI across central government and to help broaden ownership of the legislation. Working in this way will emphasise the importance of cross-departmental working and focus departmental efforts in a coherent and purposeful fashion

The Group's terms of reference are:

To support Senior Group on FOI/DP on FOI issues by:

- Acting as a forum for sharing Best Practice on FOI matters
- Ensuring promulgation of information on FOI matters within Departments and their sponsored NDPBs
- Acting as a contact point on FOI issues within their respective Departments

And in the short to medium term to:

- Report to Senior Group on progress in Departments and their sponsored NDPBs
- Look in detail at issues arising from remits given to the group by the Senior Group
- Consider proposals for guidance on methods and mechanisms for the practical implementation of the policies decided by the Senior Group

In the longer term, after the implementation of the Act, to:

- Co-ordinate responses to cross-Whitehall requests under the Act.

To undertake other tasks related to the Central Government policy on the Freedom of Information Act as may be agreed by the Senior Group or on the request of Practitioner's Group members.

The Group will meet at least six times a year and the Senior Group will meet at least three times a year.

## **SENIOR GROUP ON FOI AND DATA PROTECTION**

### **Paper by the Lord Chancellor's Department**

This paper sets out the duty for public authorities to adopt and maintain a publication scheme as required by section 19 of the Freedom of Information Act 2000 and the anticipated scheme content the Information Commissioner will require Departments to meet for her to approve each Publication Scheme.

In summary, Government Departments need to co-ordinate their approach to these schemes and to adopt a common policy as to classes of information which it is appropriate to include in a scheme. Permanent Secretaries have asked that the Senior Group oversee the formulation of Government policy on this, and for detail to be worked out in the Practitioner's Group on Freedom of Information.

In order to determine a cross-Government view, the Group are asked to consider:

- a) what difficulties they would have meeting the Information Commissioner's expected requirements for Publication Schemes;
- b) and if these difficulties are significant enough that pressure to meet these requirements should or could be resisted.

The Group are invited to agree:

- a) that these issues be examined by the Practitioner's Group
- b) that the Practitioner's Group report back on these issues for the next meeting of this group.

## Co-ordination of a Government View on Publication Schemes

### Introduction

Experience overseas has consistently shown the importance of changing the culture through requiring active disclosure. This enables public authorities to get used to making information available in the normal course of their activities. Proactive disclosure also helps to ensure that FOI does not become a potentially confrontational arrangement under which nothing is released unless it is specifically asked for.

Our FOI Act (the Act) encourages active disclosure by placing a duty on every public authority to adopt and maintain a Publication Scheme. This is a scheme that sets out the information that a public authority will make available as a matter of course.

According to the Schedule announced by the Lord Chancellor on 13 November, Government Departments and their NDPB already operating the Code of Practice on Access to Government Information (the Code), will have to **apply these schemes from November next year.**

The Information Commissioner must approve the Publication Scheme of each public authority. All schemes for the organisation in the first tranche of authorities required to apply them will need to be approved before November 2002. This means that work on Publication Schemes must start now.

Most Departments already publish a large amount of information, and a number of government initiatives, in particular those relating to Modernising Government, e-Government, the Information Asset Register, and policies arising from the Cross Cutting Review of the Knowledge Economy, have already pushed forward work in this area.

### Government Co-ordination

**Government Departments need to co-ordinate their approach to these schemes and to adopt a common policy as to classes of information which it is appropriate to include in a scheme.**

Permanent Secretaries have asked that the Senior Group oversee the formulation of Government policy on this, and for detail to be worked out in the Practitioner's Group on Freedom of Information.

**In developing our policy on publication schemes it is important that we recognise that:**

- **compliance with the scheme will be a statutory duty; we cannot change our mind about the classes of information to be included in the scheme after it has been agreed, without the consent of the Information Commissioner;**

- **we are not obliged to include within the scheme any information which would be exempt from disclosure if sought under the individual right of application;**
- **we must include in publication schemes any document or series of documents for which we make a charge, otherwise we shall lose the ability to make a charge other than under the fees regulations to be made under the provisions of the Act.**

The concept of a Publication Scheme is new to UK Government and there is, as yet, no accepted form for these Schemes. The Information Commissioner has already undertaken a public consultation and embarked on a series of pilot schemes. The Commissioner will be producing guidance on Publication Schemes and the criteria by which she will be approving schemes, in the New Year.

In the meantime, we already have a good idea of what the Commissioner will expect to find included in Departments' publication schemes. The Information Commissioner's recent consultation paper, the requirements under the existing Code of Practice on Access to Government Information and the recommendations of the 1999 Advisory Group on Openness in the Public Sector all build a significant picture of the likely content of Publication Schemes under the Act.

**Departments are asked to consider what difficulties they would have meeting the Information Commissioner's expected requirements for Publication Schemes; and if these difficulties are significant enough that pressure to meet these requirements should or could be resisted.**

**It is proposed that the group give a remit to the Practitioner's Group to consider these questions in more depth and for the Practitioner's Group to report back to this group for its next meeting at the end of March.**

### **FOI Act Publication Scheme Requirements**

Section 19 of the Act places a duty on every public authority to:

- a) adopt and maintain a scheme which relates to the publication of information by the authority and to have that scheme approved by the Commissioner
- b) publish information in accordance with that scheme
- c) review the scheme from time to time

Each authority's Publication Scheme must specify:

## Restricted - Policy

- a) the classes of information which the public authority publishes or intends to publish
- b) the manner in which information of each class is, or is intended to be, published
- c) whether the material is, or is intended to be, available free of charge or on payment

In adopting or reviewing a Publication Scheme, the Act requires that a public authority should have regard to the public interest in:

- a) allowing public access to information held by the authority, and
- b) the publication of reasons for decisions made by the authority.

### **Existing Requirements Under the Code**

**The Information Commissioner is likely to press for Departments to include in their Publication Schemes information they are currently expected to make available under the existing Code of Practice.**

The Open Government Code sets out the types of information Government is currently expected to release. Those bodies subject to the jurisdiction of the Parliamentary Ombudsman are expected to:

- a) publish the facts and analysis of the facts which Government considers relevant and important in framing major policy proposals and decisions; and that such information will normally be made available when policies and decisions are announced;
- b) publish, or otherwise make available, explanatory material on Departments' dealings with the public (including such rules, procedures, internal guidance to officials, and similar administrative manuals as will assist better understanding of departmental action in dealing with the public) except where publication could prejudice any matter which should properly be kept confidential under the exemptions contained in Part II of the Code
- c) give reasons for administrative decisions to those affected
- d) to publish in accordance with the Citizen's Charter:
  - i) full information about how public services are run, how much they cost, who is in charge, and what complaints and redress procedures are available;
  - ii) full and, where possible, comparable information about what services are being provided, what targets are set, what standards of service are expected and the results achieved.

**Recommendations of the Advisory Group on Openness in the Public Sector (1999)**

**In approving an authorities' Publication Schemes we can also expect the Information Commissioner to take into account the recommendations of the Advisory Group on Openness in the Public Sector.**

The Advisory Group recognised that the Publication Scheme provisions of the FOI Act are an 'innovation' and that they expect the schemes to build on existing good practice and extend to new areas. The report went on to say that it will be difficult to determine precisely where to draw the line between accessibility to the public and burdens on public authorities. On their recommendation pilot schemes are already underway.

In their report the Group set out an example of the sorts of information an authority should include in their Publication Scheme as an illustration. This is attached in annex A. In their view, Publication Schemes should aim to make as much information as possible available, relating to the functions of an authority and how it operates in ways that ensure that it is available to as wide an audience as possible, in an open and helpful way.

The Advisory Group on Openness also recommended:

- That there should be clear responsibility within an authority for preparing, monitoring the compliance with, and reviewing its publication scheme.
- the level at which decisions about publication may be made will need to be well known within the authority
- wherever possible, Publication Schemes should be drawn up in consultation with the local public, media and interest groups
- that to ensure that a scheme is as open as possible an authority should be encouraged to go beyond the legislative requirements.
- that there should be a strategy for developing and implementing a Publication Scheme. In particular, the strategy should identify the triggers for the publication of information such as a new policy, a new publication, or request for information.
- that Departments will need to consider what means of disseminating information is to be used. The internet is the obvious means but information should be published in as many ways as possible so that it is as widely accessible as possible.
- Information that is currently free of charge should remain so. Any new charges should be appropriate to the information and not limit access to

the information by those who might need it most. It would not, for instance be appropriate to charge for leaflets designed to inform members of the public of their rights and responsibilities.

The group also noted that there are currently a wide range of administrative and legislative requirements in relation to the disclosure of information, and that, therefore, the apparent costs of developing publication schemes might be less than might first appear.

### Information Commissioner's Consultation Paper on Publication Schemes

The Information Commissioner undertook a public consultation on publication schemes between July and September this year. The responses to the consultation are being analysed. This analysis will be taken together with feedback from the pilot schemes, so that by early next year a substantial body of opinion and experience will be available for drawing up guidance and firm criteria for approving schemes.

The Information Commissioner is working up a checklist of criteria for approval of proposed publication schemes. An early draft of the checklist appears in the Commissioner's consultation paper. The checklist requires that the Scheme:

- Be compliant with s19 of the Act
- Take regard to the expected demand for the information
- Authorities to show how the scheme differs from the information currently available
- Demonstrate reasonably accessibility of the Information
- Conform with good practice (as set out in the consultation paper)
- Set out when and how the information will be published
- Contains details of how the scheme will work

The Consultation Paper also gives consideration to the definition of a 'class' of information. The Commissioner recognises that it may be valuable for both authorities and applicants for common terms to be used for similar types of information across public authorities. The Commissioner's guidance, in the New Year, will give more details.

A definition of 'publication' is given in the consultation paper as "the act of making publically know". A more detailed definition is given as:

"material issued or distributed to the public in any format (even though in practice it may be of interest to relatively few) whether free of charge or on payment. It can include both "raw data" and value added information."

**The Commissioner has said that the specification of a class of information in a publication scheme implies a willingness to make**

**public all the information covered by that class. On occasion, information in these classes will be subject to an exemption in the Act. The consultation paper took the view that the class may still be published minus that information. The example given in the paper is the minutes of board meetings. These minutes might still be published save for individual personnel and staffing matters. Therefore the publication scheme can state that the class is available and explain which items are exempt.**

The Information Commissioner also:

- expects that information will increasingly be published on websites but notes that information which is only available on request cannot be included in publication schemes.
- states that, at least for initial schemes, public authorities should focus upon areas where a significant level of demand is expected in the context of the Act.
- Makes no requirement for Publications Schemes to duplicate information which is published by another public authority. A clear reference to the publication or link to the information or site would suffice. This is particularly in relation to legislation relevant to the function of the department.
- expects that authorities will have plans to develop their publication schemes over a longer period than five years, and would wish to implement them in a phased way, for example, a number of new classes each quarter or half year. However, such plans must not cause exemptions under the Act or Code of Practice (for information to intended for future publication) to be used unreasonably.

### **Charges**

Where charges are set they may need to be justified to the Information Commissioner. The Information Commissioner has said:

- that charges that are set within the published HM Treasury guidelines on charges for information will normally be accepted.
- Information which an applicant can access for his or her own use from a website should normally incur no charge
- Where an applicant is without Internet access and seeks similar information, any charge should be no higher than a charge calculated under the Act's fees regulations (draft available).

**Checklist of types of information to consider for publication;  
extract from the Information Commissioner's Consultation Paper on  
Publication Schemes**

**A) Role, function and management of the public authority**

- mission, objectives and functions of the authority
- organisation of the authority, including information about who is responsible for which function and how to contact him or her
- agendas and minutes of board meetings and associated papers
- reasons for policy and administrative decisions
- targets, including those set for standards of service and financial performance, together with results achieved and comparative information
- sources of income, and how effectively money is raised and spent, for example, on different aspects of administration

**b) Dealing with the public and Parliament**

- explanatory material on the authority's dealings with the public, including copies of rules, procedures, internal guidance, and administrative manuals
- the procedure for making and handling complaints and appeals relating to the prime functions of the authority (for complaints relating to Freedom of Information Act matters, see f) below)
- details of enforcement and compliance actions and rulings in cases that have been the subject of appeals
- copies of information given in replies to and consequent on Parliamentary Questions, and placed in the House of Commons Library

**C) Development and implementation of policy**

- facts and analysis of the facts which the government considers relevant and important in framing major policy proposals and decisions
- studies and reports by internal staff and external specialists that are relevant to current performance and the development of major policy proposals
- public consultation documents, supporting documents and responses

**D) Legislation relevant to the function of the authority or department**

*(note: this section should not be read as a requirement to duplication information, which is*

*published by another public authority. A cross-reference or link would suffice)*

- texts of international treaties, conventions and agreements
- community, national, regional and local legislation
- progress reports on implementation
- explanatory notes and guidance relating to Bills, Acts, and codes of practice.

**E) Procurement, grants, loans and guarantees**

- procurement and supplier policies, with bidding opportunities, decision criteria, contract performance standards, results of regular performance reviews, and results achieved
- a schedule, which is updated regularly, with details of contracts awarded.
- policies on the awarding of grants, loans and the provision of guarantees; details of grants and loans awarded, guarantees provided; details of reviews and, where available, of outcomes.

**F) Freedom of Information Act implementation and operation**

- the full publication scheme approved by the Information Commissioner
- the processes and policies adopted to implement: the code of practice referred to in Section 45, including arrangements for advice and assistance the code of practice referred to in Section 46, including policies and arrangements for records management in the authority
- guides, indexes and metadata, to enable applicants to see which information is published, and which is not pro-actively published, but may be available under the Freedom of Information Act, via Inforoute, or under other legislation
- information about the procedures for dealing with requests, provision of advice and assistance
- information about the handling of complaints in the context of the Act, target times for determining complaints and success in meeting these targets
- analysis of access made to the published information in order to monitor demand.
- information released in response to previous requests, to the extent that this is reasonably practicable
- procedures for members of the public to log requests for particular classes of information to be published in future

The Rt Hon Patricia Hewitt MP  
Secretary of State for Trade and Industry

RESTRICTED - POLICY

File

Top: PD(GS)



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PD(CJR)  
PD(Com)



The Rt Hon The Lord Irvine of Lairg  
The Lord Chancellor  
House of Lords  
LONDON  
SW1A 0PW

17 November 2001

Secretary of State  
Department of  
Trade and Industry

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London SW1H 0ET

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*Dear Deputy,*

**GUIDANCE ON HANDLING SUBJECT ACCESS REQUESTS MADE UNDER SECTION 7 OF THE DATA PROTECTION ACT 1998**

Thank you for copying me your letter to the Prime Minister of 6th November in which you provide guidance on the handling of subject access requests under Section 7 of the Data Protection Act. I am content with the strict approach proposed in the guidance as regards manual records. This is consistent with the Department's present policy for dealing with this type of request.

Just one further point. The guidance covers a lot of ground in a developing area. We shall need to make sure that officials share knowledge effectively as the cases arise so that, especially on some of the second order issues, the guidance can be refined in the light of experience.

I am copying this letter to the Prime Minister, CRP (FOI) and to Sir Richard Wilson.

*Best wishes,*

**PATRICIA HEWITT**

JW11081

RESTRICTED - POLICY

**dti**

Department of Trade and Industry

020 7270 5456



CS  
cc: SV  
DH or.

RESTRICTED

Treasury Chambers, Parliament Street, London, SW1P 3AG

The Rt. Hon. Lord Irvine of Lairg QC  
Lord Chancellor  
House of Lords  
London SW1A 0PW

14 November 2001

*Dear Jerry,*

**FREEDOM OF INFORMATION ACT 2000**

Thank you for copying to me your letter to the Prime Minister of 31 October about plans for implementing the Freedom of Information Act.

2. I agree that public authorities need sufficient time to prepare for implementation and am content with the timescale you propose for the right of access. We have, of course, agreed that the costs of implementing the Act will be absorbed by departments and other public authorities from within existing resources. The date you propose for implementing the general right of access would enable costs to be spread over the period to January 2005 and seems a helpful approach.
  
3. It will however be important, given the longer timescale proposed for the introduction of access rights, that public authorities do not lose sight of the need to work towards this. I would be interested to hear how your department plans to keep track of progress towards the introduction of access rights.

020 7270 5456

**RESTRICTED**

4. In implementing the publications scheme requirements it will be important to be clear about how schemes should operate. You may recall that I said it would be helpful if the Code of Practice under Section 45 of the Act should include a reference to the guidance on charging for information which is published on the Treasury web site – my letter of 19 July refers.

5. I understand that it is planned to submit a revised draft of the Code to the Information Commissioner by the end of the year for the statutory consultation. I should be grateful if you could ensure that it includes a form of words about the guidance. I understand that officials have discussed, and do not think this would be a problem, but have still to agree a draft form of wording. I would welcome your assurance that the draft of the Code which goes to the Information Commissioner for the statutory consultation, will include a suitable form of words, as agreed between our officials, and that the Commissioner will be advised of this before the end of this year. Given this assurance, I would have no difficulty with publication schemes being phased in from November 2002.

020 7270 5456



**RESTRICTED**

6. A copy of this letter goes to the Prime Minister, members of CRP(FOI) and to Sir Richard Wilson.

*For info,*

*Andrew*  
**ANDREW SMITH**



RESTRICTED - POLICY

The Rt Hon The Lord Irvine of Lairg MP  
Lord Chancellor  
House of Lords  
London  
SW1A 0PW

~~October 2001~~

2 November 2001

Secretary of State  
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CS  
JUN  
AA  
BJR  
01

Dear Jerry,

**FREEDOM OF INFORMATION ACT 2000**

**Thank you for copying me your letter and minute to the Prime Minister of 31 October and 2 November respectively setting out a timetable for bringing the Freedom of information Act into force. I am content with your proposals. However, your letter does not mention the position of publicly owned companies that will be caught by Section 6 of the Act. I suggest that for reasons of presentation and practicality, publicly owned companies should not be subject to publication scheme requirements until November 2004.**

I am generally content with your proposals to take a more cautious approach than previously envisaged to implementing the Freedom of Information Act and I agree the timetable set out in your schedule for adherence to publication scheme requirements.

However, your letter does not mention the position of publicly owned companies. BNFL and Consignia and their wholly owned subsidiaries are among those publicly owned companies that will be caught by Section 6 of the Act. I understand that it is the intention that publicly owned companies and their wholly owned subsidiaries will be brought into scope at the same time as their parent departments.

We have primed BNFL and Consignia and their wholly owned subsidiaries to set arrangements in place for implementing the Act and I have no reason to doubt that they would be in a position to abide by publication scheme requirements by November 2002. However, given the cautious approach now proposed for commencing the FOI duties, I am concerned that to impose on what are essentially commercial enterprises as relatively early as November 2002 the duty to abide by a publication scheme could lay us open to the charge of unduly delaying this duty until 2004 as regards the second tranche of Non Departmental Public Bodies and the remaining public authorities. I therefore suggest that companies caught by

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Section 6 should be brought into scope along with the remaining public authorities in June 2004.

I am copying this letter to the Prime Minister, members of CRP (FOI) and to Sir Richard Wilson.

*Bea wister,*

*Patricia Hewitt*

**PATRICIA HEWITT**



f

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tel: 0870 0012345 dfes.ministers@dfes.gsi.gov.uk  
Rt Hon Estelle Morris MP

The Rt Hon The Lord Irvine Of Lairg QC  
Lord Chancellor  
House of Lords  
London  
SW1A 0PW

Faxed

7 November 2001

CS cc: JJH

Dear Sir,

**IMPLEMENTATION OF THE FREEDOM OF INFORMATION ACT 2000**

This is in response to your letter to the Prime Minister of 31 October about revised plans for implementation of the Freedom of Information Act.

Although my department would have been in a good position to implement the Act next year as originally planned, the proposed schedule for phased implementation of the publication schemes followed by implementation of the access rights provisions for all public authorities seems the most practical and sensible approach. It would also avoid the anomaly in the original timescale of having my Department, local education authorities and schools and colleges come within the Act at different times. I am content for the proposal to be adopted.

I am copying this letter to the Prime Minister, members of CRP(FOI) and to Sir Richard Wilson.

Best wishes  
Estelle

**Estelle Morris**



BF 22/11

BF CJ 13/12

BF CJ



RESTRICTED - POLICY

HOUSE OF LORDS,

LONDON SW1A 0PW

CS  
cc: JSH

F

N6 - spoken to Abbey  
JRU covering this together with  
a case and will put i advice  
together.

PRIME MINISTER

**GUIDANCE ON HANDLING SUBJECT ACCESS REQUESTS UNDER SECTION 7 OF THE DATA PROTECTION ACT 1998**

This letter seeks your agreement, and that of colleagues, to adopt the attached Guidance on handling subject access requests under the 1998 Act, and to require Departments to consult, using the cross Whitehall officials groups set up for that purpose, in cases where they wish to disclose information over and above that strictly required by the legislation. I would welcome views by 30 November.

We have discussed the problems that many Departments have experienced in dealing with subject access requests, in particular those which go beyond the usual interaction between an individual and the state and move into areas such as the formulation and development of Government policy. I believe that many of the problems we have encountered could be overcome if we adopt a robust approach to our responsibilities under the Act (ie not overly risk averse), provided that we have a sound legal base for doing so.

The attached Guidance sets out a practical approach to the operation of the Act, which, if applied by all Departments, will ensure a consistent approach across Government and reduce the administrative burden on Departments. The Guidance follows a route of minimal, defensible compliance and avoids an over enthusiastic maximalist stance.

I have sought the opinion of First Treasury Counsel, Philip Sales, on a number of points relating to the operation of the Act. His opinion has been helpful, and the attached Guidance is consistent with his advice.

It is important, however, that we agree, collectively, to adopt and adhere to this Guidance. Some Departments may wish, for sound policy reasons, to disclose information over and above that which is strictly required by the legislation. I have no wish, unnecessarily, to try to prevent Departments acting in this way. But we must all recognise that disclosure decisions taken by one Department may reflect adversely on others. If we disclose more than is necessary under the legislation, we should make it clear that we are doing so as a matter of policy rather than legal obligation and consult other Departments through the cross Whitehall structures we have set up before doing so.

I hope that adherence to the Guidance will avoid the need for significant amendment to the Data Protection Act, which would be difficult presentationally.

I am copying this letter to members of CRP(FOI) and to Sir Richard Wilson.

*Dofh*

LORD CHANCELLOR

November 2001

6

RESTRICTED - POLICY

## Guidance on Handling Subject Access requests under section 7 of the Data Protection Act 1998

### Introduction

This Guidance relates to all requests for subject access under section 7 of the Data Protection Act 1998. However, many of the issues covered in the Guidance will have particular relevance in circumstances where requests for subject access go beyond the interaction between an individual and the state and move into areas such as the formulation and development of Government policy. Unfortunately there is no express exemption in the 1998 Act for the formulation of policy (by contrast with section 35 of the Freedom of Information Act 2000), though, as noted below, other exemptions may well apply.

2. It is important that, in handling requests, Departments adopt a consistent approach. The purpose of this Guidance is to assist Departments to determine what they must do to comply with the legislation. There may well be other interpretations of the statutory duties imposed by the Act, and in the end this is a matter for the courts to decide. But the interpretation set out in this Guidance is consistent with legal advice received from Treasury Counsel and Departments should not depart from this Guidance unilaterally. If, in any case, a Department considers that it would be right to adopt a different interpretation of the legislation, or to disclose either more or less information, than required by the legislation, they should seek the agreement of the Data Protection Practitioners' Group. Contact:

3. The Guidance is necessary because:

- there may be a great deal of information held and the amount of work needed to identify all the information which must be disclosed could be considerable;
- there is a risk involved in disclosing information about people other than the data subject (which could itself be a breach of the law);
- the subject matter of the request could itself be sensitive.

4. This Guidance may be affected as other legislation (notably the Freedom of Information Act 2000) comes into force, or as a result of court decisions. The Guidance will be regularly reviewed to keep it up to date.

### What is personal data?

5. Personal data is information relating to an identifiable living individual. It includes information about the intentions of a data controller towards the data subject and applies not only to information which itself identifies the data subject but also to information relating to an individual who can be identified from other information which is in the possession of, or is likely to come into the possession of, the data controller.

6. All automatically processed (ie computerised) personal data are covered, irrespective of the form in which the computer processes them. For example, the 1998 Act applies to the content of e-mails, address lists and CCTV material, as well as personal data contained in databases.

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7. A reference to a name, on its own, without any other information may not be sufficient to constitute personal data under the Act. However, it is likely that the context in which the name is held will enable some information to be inferred about an individual in such a way that it would be personal data for these purposes.

8. The 1998 Act also applies to a limited range of manual records. Three criteria must be met for a manual record to be within the scope of the Act:

- the information must be part of a structured set of information, relating to individuals;
- the structuring must be done either by reference to individuals or by reference to criteria relating to individuals (e.g a unique personal identification number);
- the structuring must allow specific information relating to a particular individual to be readily accessible.

9. Lord Williams of Mostyn set out the Government's view of what this meant in the House of Lords (OR: 16 March 1998, Cols 467-468):

"Our intentions are clear. We do not wish the definition to apply to miscellaneous collections of paper about individuals, even if the collections are assembled in a file with the individual's name or other unique identifier on the front, if specific data cannot be readily extracted from that collection.

An example might be a personnel file with my name on the front. Let us assume that the file contains every piece of paper or other document about me which the personnel section has collected over the course of my career, and those papers are held in the file in date order, with no means of readily identifying specific information about me, except by looking at every document. The Government's clear intention is that such files should not be caught. We want to catch only those records from which specific information about individuals can be readily extracted.

Let us take the case of a personnel file consisting only of information about my sickness record during my career. If that file has my name on the front and is part of a structured set, that file will be caught because the specific information about me, my sickness record, is readily available.

"Specific" information is intended to mean and does mean distinct information within the file which can be distinguished from other information in the file and separately accessed. It means information of a distinct identity which sets it apart from the rest of the generality of personal information held."

10. Departments should not disclose information from manual records unless they are satisfied that, on a strict interpretation of the legislation, the records fall within the scope of the 1998 Act or they have taken a clear policy decision, after consultation with other Departments, through the Data Protection Practitioners' group, that they should disclose information over and above that required by the legislation. In such circumstances, they should make it clear that they are not obliged by law to disclose such information, but are doing so as a matter of policy. If one Department's manual records are structured in such a way that they are not caught by the Act, but comparable records in another Department are within the scope of the 1998 Act, there

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is no need for the first Department to take the view that it must treat its records as being within scope, though for policy reasons, they may wish to take a consistent approach.

### Open-ended requests

11. If Departments receive a very general request, for example, "please give me everything you have on me", the Act allows them to seek more detailed information (section 7(3), as substituted by paragraph 1 of Schedule 6 to the Freedom of Information Act).
12. The test is of what further information the Department "reasonably requires" to locate the information sought. Points to note are:
  - in dealing with an open-ended request it would be unreasonable to ask someone to provide information he or she is unlikely to possess – for example, someone outside the Department is unlikely to have any knowledge of the structure of the records in the Department;
  - it may well be reasonable to ask for some general pointers, such as the approximate date of a particular incident;
  - if the request comes from a person who has knowledge of how the Department works (e.g. an employee) it may be reasonable to ask that person to provide more detailed information about the likely location of the personal data sought, or to state whether the individual has dealings with the Department on a particular subject;
  - Departments may ask a person why he or she believes their personal data are being processed if that information is reasonably required to help locate the data.

### Records or information?

13. The Act provides a right of access in permanent form to the information that is held about the applicant. The information must be communicated in an intelligible form (section 7(1)(c)). There is no requirement for the individual to have a printout or photocopy of the original material, though this will often be the simplest way of giving access. But a freshly typed record of the information would suffice, and this may be the desirable way of providing access to information where the original document has to be edited to remove non-disclosable information.

### Information about other people

14. A subject access request may cover information which relates to one or more people other than the data subject (this may include Ministers and officials). The information about the other person will be personal data about that person, to which the usual data protection rules, including the restrictions on disclosure, apply.

15. In such circumstances, by virtue of section 7(4) of the Act, the Department does not have to give access to the information in question unless either:
- the other person has consented to the disclosure of their data to the applicant; or
  - in all the circumstances it is reasonable to make the disclosure without that person's consent.

16. The Act (section 7(6)) sets out criteria to which Departments must have regard in considering whether it would be reasonable to disclose information without consent (although other considerations may also be relevant). The criteria specified are:

- any duty of confidentiality owed to that person;
- any steps the Department has taken to seek their consent;
- whether the person is capable of giving consent; and
- any express refusal of consent by them.

17. It is important to note that, if consent is not forthcoming and it is not reasonable to make the disclosure without consent, the Department must (by section 7(5)) make available as much information as it can without revealing the identity of the other person (for example by omitting the person's name, or other identifying particulars).

#### Permanently deleting electronic materials

18. Instructing a computer to delete a particular item may not result in the item being destroyed immediately. At least for a period, the information might still be retrievable albeit with substantial cost and disruption to the system. However, where it is the intention that data should be permanently deleted, and this is not achieved only because the technology will not permit it, Departments may regard such data as having been permanently deleted.

19. This approach is not justified where the data have only been temporarily deleted and are stored in such a way that they could easily be recovered.

#### Back up data

20. Where back up data are identical to, or not significantly different from, current data, Departments may determine that there is little point in giving the applicant copies of both sets. Where material changes have been made, it may be necessary to give access to some or all versions of the personal data. Back up data are data held specifically for the purpose of recreating a file in the event of the current data being destroyed.

#### Subject access exemptions

21. These are described briefly in the Annex to this paper.

22. Departments might have extensive holdings of personal data about an applicant which can only be checked in detail by the investment of a great deal of time and other resources. It is necessary to distinguish which data benefit from an exemption and which do not. But in making that distinction, Departments might wish to take a broad view of which data are held for which purpose. Analysing each reference to the data subject in detail requires the input of a great deal of time and other resources. It is arguable that the Act does not require such fine sifting of the material. If it is established that an exemption applies to data held for a particular purpose, Departments may take the view that all the data held for that purpose are covered. Care should be taken, however, in relation to case by case exemptions, that the broad view remains linked to the case in question. This approach should simplify and speed up the process of considering subject access requests.

Policy documents

23. The absence of an express exemption for policy documents (to be contrasted with the exemption in section 35 of the Freedom of Information Act) does not mean that all personal data in policy documents must be disclosed. Depending on the subject matter, a number of exemptions under the 1998 Act could be relevant. More generally the subject access exemption for research, statistical and historical purposes (section 33(4) ) may apply. This exemption is available where:

- the data are processed only for research (including statistical or historical) purposes; and
- the data are not processed to support measures or decisions with respect to particular individuals; and
- the data are not processed in such a way that substantial damage or substantial distress is, or is likely to be, caused to any data subject; and
- the results of the research or any resulting statistics are not made available in a form which identifies data subjects or any of them.

24. Draft documents, that is those which have been superseded by a later document, may be retained only for archival (historical) purposes, to ensure that there is a complete record of the events leading to a decision. The decision itself will have been, or will fall to be, taken on the basis of a final document. Thus the personal data contained in these documents may fall within the ambit of section 33.

25. Where final decisions have been taken, the documents on which those decisions were made will, at some point in time, be held only for historical purposes. Documents should be regarded as "live" for at least the length of the limitation period for judicial review (at least three months from the date on which the decision was taken), but thereafter Departments may be able to make use of the section 33 exemption on the basis that the documents (and therefore the personal data contained in them) are held only for historical purposes. However, the exemption will not apply to the extent that, and for such time as, the documents are used or held for other purposes.

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The Rt Hon The Lord Irvine of Lairg  
Lord Chancellor  
House of Lords  
London  
SW1A 0PW

6<sup>th</sup> November 2001

*Dear Ding*

**FREEDOM OF INFORMATION ACT 2000**

Thank you for copying to me your letters of 31 October and 2 November to the Prime Minister about implementing the Act.

I agree with the proposed approach. It is better to get this right than to move ahead when public authorities are insufficiently prepared.

- ▶ I am copying this letter to the Prime Minister, members of CRP(FOI) and to Sir Richard Wilson.

*Yours  
Tessa*

TESSA JOWELL



RESTRICTED - POLICY



Home Office

Home Secretary

50 Queen Anne's Gate, London SW1H 9AT

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 ac: JH  
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The Rt Hon The Lord Irvine of Lairg QC  
 Lord Chancellor  
 House of Lords  
 LONDON  
 SW1A 0PW

06 NOV 2001

Dear Derry

## FREEDOM OF INFORMATION ACT 2000

Thank you for my copy of your letter dated 31 October 2001 to the Prime Minister in which you proposed a timetable for implementation of the Act and your letter of 2 November suggesting that you announce the timetable on 13 November.

I agree with your view that we must be sufficiently prepared to meet the substantial implications of the Act. I also agree that early development of publication schemes will be an important demonstration of commitment to openness and will further stimulate the flow of information into the public domain. Accordingly, I am content with the timetable that you propose and in the Home Office, we shall continue our work to achieve the targets set. I am also content that you announce this in response to Lord Goodhart's oral question.

I am copying this letter to the Prime Minister, CRP(FOI) colleagues and Sir Richard Wilson.

Best wishes,

DAVID BLUNKETT

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SS  
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RESTRICTED - POLICY



Richmond House 79 Whitehall London SW1A 2NS Telephone 0171 210 3000

*From the Secretary of State for Health*

IMC: 19274/19334

The Rt Hon Lord Irvine of Lairg  
Lord Chancellor  
House of Lords  
SW1A 0PW

5

November 2001

Dear Jerry

**FREEDOM OF INFORMATION ACT 2000**

Thank you for your letters of 31 October and 2 November proposing modifications to the timetable for implementation of the Act. As I have stated before I regard it as extremely important that this Act should be implemented effectively, not only in central government departments and agencies, but through the wider public sector including the National Health Service.

I agree that the changes you propose will allow public authorities sufficient time to prepare for both the production of comprehensive publication schemes and have efficient and effective processes in place for the commencement of individual rights of access. I am content therefore with the proposed implementation timetable and also that it should be announced in response to an oral question from Lord Goodhart on 13 November.

I am copying this letter to the Prime Minister, members of CRP(FOI) and to Sir Richard Wilson.

Yours

**ALAN MILBURN**

(F)



RESTRICTED - POLICY

HOUSE OF LORDS,  
LONDON SW1A 0PW

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PRIME MINISTER

**IMPLEMENTATION OF THE FREEDOM OF INFORMATION ACT**

**This minute seeks your agreement and that of colleagues to announce the implementation plan for the Freedom of Information Act in reply to an oral question from Lord Goodhart on 13 November. I would be grateful for your agreement by 9 November.**

I wrote to you and colleagues on 31 October seeking your agreement to implement the Freedom of Information Act by rolling out the publication scheme provisions in the Act, by type of public authority, starting with central government in November 2002. When we have completed roll out of these schemes, we would bring into force the individual right of access provisions in January 2005.

Lord Goodhart has tabled the following oral question for answer in the Lords on 13 November:

“To ask Her Majesty’s Government when they plan to bring the Freedom of Information Act 2000 into force in relation to Government Departments.”

This will result in supplementary Questions from the floor.

This would be an ideal opportunity for me to announce the Government’s implementation plan and to set it into context. To prevaricate in my reply to Lord Goodhart would reinforce impressions that the Government is not serious about implementing its Manifesto commitment on Freedom of Information.

Therefore, subject to colleagues’ agreement to the proposals in my letter of 31 October, I would intend to use this opportunity to announce this implementation plan.

I also propose that Michael Wills answers an arranged written question in the same terms in the Commons on the same day.

I am copying this letter to members of CRP (FOI) and to Sir Richard Wilson.

LORD CHANCELLOR

2 November 2001

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HOUSE OF LORDS,  
LONDON SW1A 0PW

PRIME MINISTER

FREEDOM OF INFORMATION ACT 2000

This letter seeks your agreement, and that of colleagues to implement the Freedom of Information Act, by rolling out the publication scheme provisions of the Act first, by type of public authority, but to leave the commencement of the individual right of access until that process had been completed. A detailed timetable is annexed to this letter. I should be grateful to receive views by 8 November.

We are required by section 87(3) of this Act to have it fully in force by 30 November 2005. We need to prepare well within Government if we are to avoid the difficulties we have encountered with the Data Protection Act 1998. Unlike that Act, the Freedom of Information Act contains exemptions from disclosure to protect the formulation of Government policy and the effective conduct of public affairs. It also has a disproportionate cost exemption. These provisions will help avoid many of the problems encountered with Data Protection.

Nonetheless, I share with you concern that if we try to implement the Act too quickly we run the risk of public authorities being insufficiently prepared to take on the additional burdens imposed, particularly as they are at the same time trying to get to grips with the additional responsibilities imposed by the Data Protection Act from 24 October. That said; we also need to demonstrate progress with implementing the Freedom of Information Act if we are to avoid criticism in Parliament and the press.

I am therefore proposing that we roll out the publication scheme provisions in the Act, by type of public authority, starting with central government in November 2002. When we have completed the roll out of these schemes, we can commence the individual right of access provisions, in January 2005. This proposal will give all public authorities time to prepare for the advent of the individual right of access to information, whilst demonstrating progress through the implementation of publication schemes.

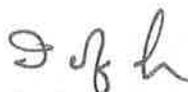
I expect that we will, however, receive some criticism from campaigners and the press about the perceived delay in implementing the Act's provisions. But I think that it is worth suffering this pain in order to give ourselves sufficient time to get this right. We took time to prepare for the implementation of the Human Rights Act, and with hindsight that was a wise decision. I am satisfied that we should proceed cautiously with the implementation of the Freedom of Information Act as well.

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**RESTRICTED - POLICY**

I propose to announce the timetable for implementing the Act, if it is agreed, in my statutory report to Parliament which is due by the end of November. Therefore, as noted above, I would be grateful to receive comments by 8 November. Once we have announced the timetable I will consult colleagues further about how we put it into effect.

I am copying this letter to members of CRP(FOI) and to Sir Richard Wilson.



Lord Chancellor

31 October, 2001

**RESTRICTED - POLICY**

## Schedule for the implementation of the Freedom of Information Act

The publication scheme provisions of the Act (including the provision for the Information Commissioner to enforce compliance with the schemes) would be implemented accordingly to the following schedule.

November 2002:	Central Government (except the Crown Prosecution Service and the Serious Fraud Office), Parliament, National Assembly for Wales, Non Departmental Public Bodies currently subject to the Code of Practice on Access to Government Information
February 2003:	Local government (except police authorities)
June 2003:	Police, police authorities, Crown Prosecution Service, Serious Fraud Office, Armed Forces
October 2003:	Health Service
February 2004:	Schools, universities, remaining NDPBs
June 2004:	Remaining public authorities

The individual right of access to information would then be brought into force for all public authorities in January 2005.

Public authorities in Northern Ireland could either be required to apply publication schemes at the same time as their counterparts in England and Wales, or alternative arrangements could be made. This is a matter for further discussion with the Northern Ireland Assembly.

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10 DOWNING STREET  
LONDON SW1A 2AA

From the Senior Policy Adviser

16 October 2001

Dear Debora

**FREEDOM OF INFORMATION ACT**

The Prime Minister was grateful for the Lord Chancellor's minute of 18 September regarding the implementation of the Act.

The Prime Minister favours the second option; to roll out the publication schemes by type of authority and have a universal commencement date in January 2005.

Sir Richard Wilson is content with this proposal and a copy of this letter goes to Ashley Ibbett and Justin Russell.

Yours ever

A handwritten signature in cursive script, reading "Clare Sumner", with a horizontal line underneath.

**CLARE SUMNER**

Debora Matthews  
Lord Chancellor's Office

RESTRICTED

file  
Copy in DC  
Inbox



10 DOWNING STREET  
LONDON SW1A 2AA

From the Senior Policy Adviser

12 October 2001

Dear Debora

### APPOINTMENT OF INFORMATION COMMISSIONER

The Lord Chancellor wrote to the Prime Minister on 17 September regarding the appointment process for the role of Information Commissioner. We are content for LCD to proceed as outlined, given the public commitment to advertise the post for open competition.

I am aware that we also owe you a reply on the implementation of the Freedom of Information Act and I hope to send you our views next week.

I am copying this letter to Justin Russell and Andrew Alberry.

Yours ever

CLARE SUMNER

Debora Matthews  
Lord Chancellor's Office

DM

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I

From: Clare Sumner  
Date: 5 October 2001

PRIME MINISTER - *New Delhi 5/10*

Cc: Jonathan Powell  
Jeremy Heywood  
Godric Smith  
Robert Hill  
Justin Russell

**FOI IMPLEMENTATION REGIME**

Derry has written proposing two possible ways of taking forward the implementation of the FOI legislation which has to be achieved by November 2005. Under the legislation public authorities are required to publish "publication schemes" explaining how they will respond to requests and then implement them.

Option One - proposes that the Act will be implemented in stages starting with Central Government who would publish a scheme in Oct 2002 and then start giving out information in April 2003. Other public authorities like local government, police, health service, schools etc would then be staggered with full implementation achieved by October 2005. The advantage is that Government will be seen to be leading the way rather than dragging its feet.

Option Two - proposes that the Act will be implemented by allowing public authorities to publish schemes from now on but not implement them until October 2005. The advantage here is that we give public authorities more time to implement the bill and put in place proper procedures for dealing with requests (one of the lessons learned from data protection).

**Recommendation**

As you know the implementation of the Data Protection Act has been shambolic. Implementation of FOI will not have the same effect on central government because there is a specific exemption for advice to Ministers which means the majority of our material will not be subject to release. However the Home Office did build in an appeal facility so we are likely to face challenges. Derry's view is that we should implement quickly for presentational reasons. However I recommend option two as it defers implementation and reduces scope for challenge over the next few years as we get to grips with data protection. The Government will be criticised by the interest groups and probably in parliament.

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Derry is also concerned that Oct 2005 will mean implementation comes in the run up to a General Election although in reality I don't think the impact of this will be that significant. Ultimately if we have built in a long implementation period central government may as well take advantage of it.

?Content to agree that public authorities publish "publication schemes" and that implementation is deferred until October 2005 just before the deadline

*Cl Sumner*

*I agree.*

**CLARE SUMNER**

**RESTRICTED**



HOUSE OF LORDS,  
LONDON SW1A 0PW

18  
Folke  
September 2001

PRIME MINISTER

### FREEDOM OF INFORMATION ACT 2000

We are required by section 87(3) of this Act to have it fully in force by 30 November 2005. We need to prepare well within Government if we are to avoid the difficulties that we have encountered with the Data Protection Act 1998. However, unlike that Act, the Freedom of Information Act contains exemptions from disclosure to protect the formulation of Government policy and the effective conduct of public affairs. It also has a disproportionate cost exemption. These provisions will help avoid many of the problems encountered with Data Protection. We are under increasing pressure in Parliament to announce how and when we will implement the Act. We will be heavily criticised if we do not make an announcement about implementation very soon after the recess. In the light of this I propose that:

- we announce that the Act will be implemented in stages, by type of public authority, starting with central government in October 2002; and
- that for each public authority the publication scheme provisions of the Act will be implemented first, with the individual right of access coming into force six months later (i.e. April 2003 for central government).

This proposal is very similar to that put forward by Jack Straw before the Election, amended to take account of the passage of time. The Act would be implemented by type of public authority, starting with central government. On the assumption that the timetable was announced in October of this year, central government would be brought into the scope of the Act, for publication schemes, in October 2002, and fully from April 2003. The schedule would be as follows:

OrganisationPublication schemes  
fromFull access  
rights from

Central government (except CPS and SFO). Non Departmental Public Bodies currently subject to the Code of Practice on Access to Government Information	October 2002	April 2003
Local government (except police authorities)	April 2003	October 2003
Police, police authorities, Armed Forces	October 2003	April 2004
Health Service	April 2004	October 2004
Schools, universities, other NDPBs	October 2004	April 2005
Remaining public authorities	April 2005	October 2005

There is a need to phase in the provisions of the Act in this way as the Information Commissioner must approve the publication schemes for each authority. She needs time to do this and to set up enforcement systems. Even though there will be scope for the use of model publication schemes, to be adopted by several public authorities, the task of approving these schemes will be an onerous one for the Commissioner. The publication schemes help define the scope of information available through individual application (as information available through publication schemes is exempt from the individual right) and therefore the publication schemes need to be in place before the individual right of application can be introduced.

The alternative option is to roll out the publication scheme provisions, by type of public authority, but to leave commencement of the individual right of access until that process had been completed. The schedule for the commencement of the publication scheme provisions would be as follows:

October 2002	-	Central government (except CPS and SFO) Non Departmental Public Bodies currently subject to the Code of Practice on Access to Government Information
February 2003	-	Local government (except police authorities)
June 2003	-	Police, police authorities, CPS, SFO, Armed Forces
October 2003	-	Health Service
February 2004	-	Schools, universities, remaining NDPBs
June 2004	-	Remaining public authorities

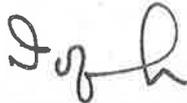
The individual right of access to information would then be brought into force for all public authorities in January 2005.

Both plans will meet the statutory deadline of implementing the Act in full by November 2005. Though the second option gives all public authorities more time to prepare for the advent of the individual right of access to information, campaigners will not regard this as sufficient and we may expect considerable flack from them if we take this route. Moreover, this option will mean that most significant parts of the Act will be implemented in a period which is likely to be in the run up to the next General Election. Those in the media who will be looking for stories critical of the Government will no doubt make use of FOI, either the delay in implementation or its perceived weaknesses, to attack the Government. The Scottish Parliament is likely to enact FOI legislation next year and may well overtake the UK in implementing legislation if the second option were chosen. The National Assembly of Wales has already said that it will behave as though the Act is in force. There will be taunts of "if they can do it, why can't you?".

It might be worth suffering this pain if Departments were not able to prepare properly to meet the demands of the timetable in the first option. We have taken soundings and most Departments have already started preparations to meet the provisions of the Act, and there is a clear consensus that, provided they were given twelve months notice of the Act coming into force, Departments could implement its provisions. In view of this I think it sensible to announce an implementation plan along the lines of the first option in this minute.

I would be grateful for your comments on this proposal, if possible by 26 September, and your agreement for me to put it to colleagues on the Ministerial sub-committee on Freedom of Information.

I am copying this minute to Sir Richard Wilson.



LORD CHANCELLOR



HOUSE OF LORDS,  
LONDON SW1A 0PW

by fax

PRIME MINISTER

### APPOINTMENT OF THE INFORMATION COMMISSIONER

**I am writing to let you know that we shall shortly begin the process of appointing a new Information Commissioner and to seek your views on the proposed procedure. It would be helpful to have your views by 1 October.**

The Information Commissioner will oversee compliance with the duties imposed under the Data Protection Act 1998 and the Freedom of Information Act 2000. The Commissioner is appointed by Her Majesty by Letters Patent. You will, of course, advise Her Majesty on the appointment.

Under section 18(5) of the Freedom of Information Act 2000, Mrs Elizabeth France, the present Information Commissioner, must vacate the office by 30 November 2002. She is eligible for re-appointment and it is open to us to offer her a further term. However, commitments were given to Parliament that an open competition would be held and I do not think we can resile from that commitment.

I therefore propose that we advertise in the press during November and also consult the Public Appointments Unit to see if they can identify likely candidates. I would expect the advertisement to seek someone with:

- extensive knowledge of one or more parts of the public sector and the way it operates;
- proven managerial ability at a senior level;
- a background in, or familiarity with, legal issues;
- experience of the management of change;
- ability to establish good relationships with senior managers, Ministers and Parliament;
- an understanding and awareness of the needs of potential users of the Acts and all interested parties, including data processors and providers of information.

A selection board will be set up, chaired by Sir Hayden Phillips, with other senior representation from the Department, and an independent member from outside the Department. They will prepare a shortlist, which I will approve, and they will then interview those shortlisted. We would aim to have a candidate selected for appointment by April 2002.

I am copying this minute to Sir Richard Wilson.

*Dogh*

LORD CHANCELLOR

17<sup>th</sup> SEPTEMBER 2001

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**RESTRICTED – POLICY**

Ashley Ibbett

From: Jonathan Tross  
Date: 6 September 2001  
CC: Sonia Phippard  
Tony Medawar  
Tessa Stirling  
Phil Hamshare  
Suma Chakrabarti  
Geoff Mulgan  
Tim Hill  
Peter Wardle  
Clare Sumner

**DATA PROTECTION ACT**

**Issue: A round up of where we are. Essentially to provide a gloss on the meeting of the Senior Group on 5 September. You have the papers for that circulated by Gillian Boyce on 28 August.**

**LEGAL GUIDANCE ON SENSITIVE CASES**

1. LCD have produced guidance on how far a restrictive approach can be taken in sensitive and difficult cases (which I take as dealing with people who are public personalities, and on matters which blur into the policy making context that would be protected under FOI). It sets out a robust approach in relation to matters like manual files, deleted emails, and further information before search. Significantly it highlights the potential to use the exemption on historical records to protect drafts and old dealings. That is subject to confirmation from Counsel. If it is sustained it would be potentially valuable as a way of protecting the policy/press monitoring material that people have been reluctant to release. It accepts that there can be no certainty, but supports a robust approach.
2. The guidance was broadly welcomed by the Whitehall Senior Group, recognising the absence of certainty. They stressed two points. First, the need to manage the risk of different signals; openness generally; restriction where openness was inconvenient for Government. Second, they rightly made the point that this is not final work; guidance will need

to be reviewed and updated as new cases and the effect of possible legal challenges are seen.

3. With those qualifications, the guidance was endorsed. LCD will tidy it up (it needs to be drafted on the assumption that it will find its way into the public domain). It will then be circulated under cover of a letter from Hayden Philips. The Group felt it would also be helpful for this to be circulated ministerially to receive more formal political endorsement.

#### BEST PRACTICE

4. The second set of papers covered best practice notes from the Data Protection Practitioners Group. The key part covers co-ordinating handling of multi subject access requests across Whitehall. The main message is, when in doubt, check with Cabinet Office whether others have received a parallel request, and agree common handling. Again this was endorsed as good practice, and will be circulated when Hayden writes round.
5. One point to highlight. Experience of requests would not leave me too optimistic that Whitehall departments readily accept Cabinet Office instruction on handling individual cases. I believe it would help if Sir Richard could reinforce, (e.g. at the Wednesday morning meeting), that Ministers expect co-ordination and common handling. This is not discretionary advice. Similarly, I believe requests for clarification of the law should be channelled through LCD rather than individual departments rushing to secure parallel (and inevitably competing) advice from Counsel.

#### POSSIBLE AMENDMENTS TO THE ACT

6. Third, the group considered a report by LCD on possible amendments to the Act. As you know, the Lord Chancellor is not persuaded of the case for further legislation. He believes that robust handling will take most of the trick. Whether it is right partly depends on favourable advice from Counsel on the records exemption. The Directive is not helpful in relation to explicit exemptions for policy matters or excess work. However, it is accepted that we could introduce more specific protection of international dealings and probably extend protection for national security. The judgement here is a political one: having fairly recently introduced a regime, is it feasible to tighten up again (which will be seen as a rowing back from rights granted). This is particularly relevant to handling in the Lords).



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**PERSONAL**

Tony Medawar

From: Jonathan Tross  
Date: 6 September 2001  
CC: Sonia Phippard  
Peter Wardle  
Ashley Ibbett  
Clare Sumner

**DATA PROTECTION PRACTITIONERS GROUP**

1. One gloss on my minute of 6 September you should bear in mind. It is right that the DPPG should continue to co-ordinate across Whitehall. The aim is robust handling, exercise of judgement, management of risk, and taking a robust judgement on what is to be released rather than the most cautious (and open) line to be on the safe side legally. The Practitioners here and across Whitehall are excellent in what they do. However, people who are good at managing this type of process are not naturally the people who are comfortable with ambiguity and risk. So I think you will need to keep some look out to guard against Practitioners across Whitehall reverting to a more cautious line than Ministers have signalled they want ( always of course assuming they stay robust when things, e.g. the Commissioner, yet difficult).

*Signed and sent via e-mail*

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