

From: [REDACTED]
To: [Warren Seddon](#)
Cc: [REDACTED]
Subject: Legislation - potential provisions
Date: 06 March 2026 12:02:00

Hi Warren,

Further to our discussion on Tuesday, here are my notes outlining our initial suggested suite of provisions. I know you wanted to see the updated list after the Directorate Meeting inputs, and I've sent you the link to the relevant Teams page in a separate email.

The focus of the suggested suite of provisions is on reducing the impact of requests (including those generated using AI) on PAs and the ICO, where those requests:

- are for information in which there is little or no public interest;
- are more properly dealt with as BAU;
- are made using pseudonyms;
- contain significant superfluous (and often incorrect) information/demands; and/or
- have the effect of swamping PAs and/or the ICO through their sheer number.

Having considered the above issues, noting their impact throughout the system, we are of the view that the most relevant area to examine in detail is the legislative provision relating to the making of the requests – section 8 of FOIA. However, other areas bear close examination, and we therefore discussed the expansion of section 14 as a potential though problematic option, alongside changes to the Commission's (as it will be then) powers and appeal provisions.

We discussed the following options:

- Amendment of section 8 in the following ways:
 - Right restricted to UK residents and foreign residents insofar as they have the right to vote in the UK (NB this would bring with it increased administrative burden in proving/checking status with potentially relatively few savings).
 - The provision of a physical address (to allow for temporary address in event of having no fixed abode).
 - Requirement of provision of identification when making a request.
 - Requirement to make clear in correspondence that the request is made under access to information legislation – allowing for easier and more proportionate determination of BAU cases.
 - Ability for PA to mandate a clearly signposted and easily accessible electronic route for making requests (with alternatives for accessibility, but potentially following the

same format so that the request is captured in the same way). This can include word limits on requests, and help focus requests on the actual information sought, to the benefit of requesters. Potential for the format of any such routes to be set out in legislation/by the ICO.

- Limit the number of requests a person can make to an individual PA to 5(?) requests in any year.
- Given the benefits of focused requests provided by the section 8 changes, we suggest a tightening up of FOIA's timing provisions, removing the PIT extension (or limiting it to one single extension of 20 WD), and making the IR statutory with a 20 WD response time (though having a clear relevant date).
- An examination of section 14 and consideration of:
 - Individuals being declared to be vexatious as well as requests.
 - Expanding it to allow refusal of FOI requests for information in respect of which there is little public interest in its disclosure. There are issues on how this would be drafted to allow an objective test/assessment and whether it would have to be weighed against the likely impact on the PA. There are concerns about opening this up as it could be prone to abuse.
- Section 50 amendment to allow for the Commission to exercise discretion to refuse to investigate cases involving information where there is little public interest in its disclosure. The holding of such a de minimis determination power at the level of an independent Commission is more attractive than leaving it to PAs, reducing the risk of misuse. An alternative would be a more generally phrased discretion like that in section 24 of the Local Government Act 1974 Power to Investigate – "In determining whether to initiate, continue or discontinue an investigation, a Local Commissioner shall, subject to the provisions of this section and sections 26 to 26D, act in accordance with his own discretion."
- Also, the ability of the Commission to reach opinions on cases with wider application (in round robin cases) should be considered. These could be served on PAs which have received the same request and, in the event that they are not disputed, they would be binding in the same way as a DN, or alternatively be subject to enforcement notice.
- The own motion investigation power of assessment/intervention could also be added to the Commission's suite of powers.
- Appeal provisions – removal of the jurisdiction of the FTT as per Burns Commission recommendations. This would retain a right of appeal on a point of law only to the UT and thereafter the Courts. Benefits include earlier determination of cases; increased regulatory certainty; the avoidance of late reliance on new exemptions at tribunal (driving improved PA performance in getting it right first time); and cost savings.

- Proactive publication -consideration of changes to the scheme, including the ability of the Commissioner to set the terms of the publication schemes, mandating the disclosure of certain information (eg performance data) to be enforceable by enforcement notice. The introduction of greater clarity in the schemes themselves would allow for the identification of clear breaches of the scheme and ability to take focused enforcement action.

As a final point it is important to note that the above provisions (except for the complaint and appeal provisions) apply only to FOIA and not to the EIR. Given that the EIR flow from the requirements of the Aarhus Convention. While the UK remains a Party to the Convention, there are certain provisions, notably those set out in Article 4, which must be complied with. There are also provisions such as Article 2's definition of the public, which would limit the ability to place residence/citizenship restrictions on the exercise of the right. In relation to the form of the request, the Convention is silent, which might at first sight give some latitude to make changes. However, the Aarhus Implementation Guide is clear that "A "request" can be any communication by a member of the public to a public authority asking for environmental information. The Convention does not specify the form of the request, thus implying that any request meeting the requirements of article 4, whether oral or written, will be considered to be such under the Convention". The likelihood of an alternative interpretation being taken of the UK's obligations under the Convention therefore seems unlikely.

Kind Regards

FOIA s.40(2) - Personal data that doesn't fall under s.40(1)



FOIA s.40(2) - Personal data that doesn't fall under s.40(1)

Principal Policy Adviser- Freedom of Information
Complaints and Appeals

Information Commissioner's Office, Wycliffe House, Water Lane,
Wilmslow, Cheshire SK9 5AF

T. FOIA s.40(2) - Personal data that doesn't fall under s.40(1) F. 01625 524510 ico.org.uk

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