

FOI – Experience so far and current areas of interest

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Role of ICO

- Regulates FOI and EIR
- Complaints Resolution
 - Investigates complaints
- Promotion and Development
 - Raises awareness and promotes good practice of the legislation

General Impressions

- Being taken seriously
- Refusals often unchallenged
- Significant Disclosures
 - Surgeons' Mortality Records
 - MRSA figures
 - Details of contracts between health organisations and private companies

ICO's approach to case handling

- Emphasis on Informal Resolution
- Explore scope for settlement which would be acceptable to PA and complainant
- Benefits for both ICO and PA
- Does not restrict or compromise power of IC

Enforcement Powers

- Decision Notices – Duty to issue if the complaint is eligible and the complainant so wishes
- Information Notices
- Right to appeal against the IC to the Information Tribunal

Lessons for ICO- Complaints Handling

- Clarity of complaint
- Communication with complainant & PA
- Case Reception – more robust triage
- Information from PA – timescales & Notices
- Investigation & resolution – formal and informal

Lessons for Public Authorities

- Clarification of request
- Communication with requester
- Importance of advice & assistance – s.16
- Time limits and PIT extensions
- Reasons for refusal – s.17 Notices
- Internal reviews – time taken & outcomes

Areas of difficulty – Refusal Notices

- Often poor quality (throughout the public sector)
- What must a Refusal Notice contain?
 - State which exemption applies
 - State why the exemption applies
 - Public interest arguments if relevant
 - Internal Review Procedure
 - Details of ICO

Areas of difficulty – Internal Reviews

- Swift and informal
- An opportunity to revisit the request
- To be carried out by a more senior member of staff
- Requirements outlined in s.45 Code of Practice

Publication Schemes

- Greater emphasis on promoting Publication Schemes
- Developing and maintaining schemes
- Requirement to review and amend schemes remains
- Can charge market rate for information contained within a scheme

The Public Interest Test

- Step 1: Identify a relevant exemption
- Step 2: Consultation
- Step 3: Identify the arguments against
- Step 4: Identify the arguments for
 - for the public authority
 - for the wider public
- Step 5: Carry out the balancing test

The Public Interest Test

- Public Interest considerations favouring disclosure include:
 - Informing debate on key issues
 - Promoting accountability and transparency for decisions and spending
 - Tackling fraud and corruption
 - Promoting probity, competition and VFM
 - Helping people understand and challenge decisions affecting them
 - Clarifying incomplete or misleading information
 - Promoting health and safety

Deceased patients records

- Not automatically exempt from FOI
- Case-by-case basis
- Purpose/applicant blind
- AHRA 1990
- Personal Information – if identifies living
- Health and Safety
- Prejudice to Effective Conduct of Public Affairs
- Information Provided in Confidence
- Human Rights Act 1998

Interface with Personal Information

- Individuals
 - FOI / DP interface
 - Public / Private lives
 - Relevance of seniority / public-facing
 - More user-friendly guidance from ICO

ICO Research (500 PAs)

- High awareness levels – 98% clear about implications (66% very)
- 90% made changes to achieve compliance
 - changes to publication schemes
 - more routine releases
 - changes to filing/RM systems (60%)

Most common requests

- Statistical information about PA (70%)
- Information about decisions made by PA (65%)
- What public money is spent on (64%)
- Details of contracts awarded (58%)
- Personal information about staff (51%)

Most common ground for refusal

- Personal information about staff (53%)
- Commercial Prejudice (33%)
- Available by other means (14%)
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- Information not held (8%)

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