



Freedom of Information

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ICO agrees rules for FOI information from government

The Information Commissioner and the Department of Constitutional Affairs have agreed a set of rules for the provision of information by Departments to the Commissioner.

The Memorandum of Understanding ('MoU') relates to applications to the Information Commissioner for a decision, and to Information Notices.

It clarifies the powers of the Commissioner and responsibilities of Government Departments, and seeks to promote good practice—in doing so, it sets out practical arrangements for providing

information to the Commissioner to a level of detail that is not present in the Freedom of Information Act ('FOIA').

Government Departments undertake to:

- provide all relevant information as quickly as possible and, in any event, within 20 working days of being contacted by the Commissioner, unless otherwise agreed;
- provide any additional relevant information subsequently requested by the Commissioner as quickly as possible and, in any event, within 10 working days;

- provide all information requested including any redacted information; and
- inform the Commissioner, giving reasons, where it is not able to provide the information within the time periods.

In return, the Information Commissioner undertakes in the MoU to:

- contact the relevant Department when he receives an application under s.50 of the FOIA Act, as soon as practicable and in any event within 10 working days;

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NHS Trusts urged to adopt blanket disclosure ban

NHS Connecting for Health ('NHSCH'), the government agency responsible for modernising the NHS, has been criticised by FOI pressure groups following the release of a memo sent by the NHSCH to NHS Strategic Health Authorities and Trusts ('SHAs').

The NHSCH memo asks the SHAs to refuse all FOI requests relating to commercial arrangements with NHSCH prime contractors, including contracts, implementation plans, service performance measures and details of ongoing commercial discussions.

Under the Freedom of Information Act (the 'Act'), public bodies such as the SHAs are obliged to disclose information they hold if requested to do so, except where an exemption applies. Exemptions are available for confidential information or information which would damage the commercial interests of the authority or anyone else. But critics of the memo are concerned at the seemingly broad-brush approach at the expense of open government.

The memo warns that "much of the information" relating to commercial

arrangements is confidential and that release of that information could expose the authorities to legal action.

While the memo highlights the exemption allowing authorities to withhold commercially sensitive information, the exemption actually only applies where the disclosure of the information is likely to cause substantial harm and the public interest weighs in favour of withholding it. According to critics, these sorts of fine judgements should only be made on a case-by-case basis rather than in the more generalised manner promoted by the memo.