

PART I

Purpose

1. This Code of Practice supports the Government's policy under the Citizen's Charter of extending access to official information, and responding to reasonable requests for information. The approach to release of information should in all cases be based on the assumption that information should be released except where disclosure would not be in the public interest, as specified in Part II of this Code.

2. The aims of the Code are:

- to improve policy-making and the democratic process by extending access to the facts and analyses which provide the basis for the consideration of proposed policy;
- to protect the interests of individuals and companies by ensuring that reasons are given for administrative decisions, except where there is statutory authority or established convention to the contrary; and
- to support and extend the principles of public service established under the Citizen's Charter.

These aims are balanced by the need:

- to maintain high standards of care in ensuring the privacy of personal and commercially confidential information; and
- to preserve confidentiality where disclosure would not be in the public interest or would breach personal privacy or the confidences of a third party, in accordance with statutory requirements and Part II of the Code.

Information the Government will release

3. Subject to the exemptions in Part II, the Code commits departments and public bodies under the jurisdiction of the Parliamentary Commissioner for Administration (the Ombudsman):¹

- a) to publish the facts and analysis of the facts which the Government considers relevant and important in framing major policy proposals and decisions; such information will normally be made available when policies and decisions are announced;
- b) to publish or otherwise make available, as soon as practicable after the Code becomes operational, 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 Part II of the Code;
- c) to give reasons for administrative decisions to those affected;²
- d) to publish in accordance with the Citizen's Charter:

¹ In Northern Ireland, the Parliamentary Commissioner for Administration and the Commissioner for Complaints

² There will be a few areas where well-established convention or legal authority limits the commitment to give reasons, for example certain decisions on merger and monopoly cases or on whether to take enforcement action

- full information about how public services are run, how much they cost, who is in charge, and what complaints and redress procedures are available;
 - 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.
- e) to release, in response to specific requests, information relating to their policies, actions and decisions and other matters related to their areas of responsibility.

4. There is no commitment that pre-existing documents, as distinct from information, will be made available in response to requests. The Code does not require departments to acquire information they do not possess, to provide information which is already published, or to provide information which is provided as part of an existing charged service other than through that service.

Responses to requests for information

5. Information will be provided as Soon as practicable. The target for response to simple requests for information is 20 working days from the date of receipt. This target may need to be extended when significant search or collation of material is required. Where information cannot be provided under the terms of the Code, an explanation will normally be given.

Scope

6. The Code applies to those Government departments and other bodies within the jurisdiction of the Ombudsman (as listed in Schedule 2 to the Parliamentary Commissioner Act 1967).³ The Code applies to agencies within departments and to functions carried out on behalf of a department or public body by contractors. The Security and Intelligence Services are not within the scope of the Code, nor is information obtained from or relating to them.

Charges

7. Departments, agencies and public bodies will make their own arrangements for charging. Details of charges are available from departments on request. Schemes may include a standard charge for processing simple requests for information. Where a request is complex and would require extensive searches of records or processing or collation of information, an additional charge, reflecting reasonable costs may be notified.

Relationship to statutory access rights

8. This Code is non-statutory and cannot override provisions contained in statutory rights of access to information or records (nor can it override statutory prohibitions on disclosure). Where the information could be sought under an existing statutory right, the terms of the right of access takes precedence over the Code. There are already certain access rights to health, medical and

³ In Northern Ireland the Code applies to public bodies under the jurisdiction of the Northern Ireland Parliamentary Commissioner for Administration and the Commissioner for Complaints, with the exception of local government and health and personal social services bodies, for which separate arrangements are being developed as in Great Britain. Some Northern Ireland departments and bodies are expressly subject to the jurisdiction of the Parliamentary Commissioner under the 1967 Act

educational records, to personal files held by local authority housing and social services departments, and to personal data held on computer. There is also a right of access to environmental information. It is not envisaged that the Ombudsman will become involved in supervising these statutory rights.

The White Paper on Open Government (Cm 2290) proposed two new statutory rights to information:

- an access right to personal records, proposed in Chapter 5;
- all access right to health and safety information, proposed in Chapter 6.

Where a statutory right is proposed but has yet to be implemented, access to relevant information may be sought under the Code, but the Code should not be regarded as a means of access to original documents or personal files.

Public records

9. The Code is not intended to override statutory provisions on access to public records, whether over or under thirty years old. Under s12(3) of the Parliamentary Commissioner Act 1967, the Ombudsman is not required to question the merits of a decision if it is taken without maladministration by a Government department or other body in the exercise of a discretion vested in it. Decisions on public records made in England and Wales by the Lord Chancellor, or in Scotland and Northern Ireland by the Secretary of State, are such discretionary decisions.

Jurisdiction of courts, tribunals or inquiries

10. The Code only applies to Government-held information. It does not apply to or affect information held by courts or contained in court documents. ("Court" includes tribunals, inquiries and the Northern Ireland Enforcement of Judgements Office). The present practice covering disclosure of information before courts, tribunals and inquiries will continue to apply.

Investigation of complaints

11. Complaints that information which should have been provided under the Code has not been provided, or that unreasonable charges have been demanded, should be made first to the department or body concerned. If the applicant remains dissatisfied, complaints may be made through a Member of Parliament to the Ombudsman. Complaints will be investigated at the Ombudsman's discretion in accordance with the procedures provided in the 1967 Act:⁴

⁴ Separate arrangements will apply in Northern Ireland

PART II

Reasons for confidentiality

The following categories of information are exempt from the commitments to provide information in this Code. In those categories which refer to harm or prejudice, the presumption remains that information should be disclosed unless the harm likely to arise from disclosure would outweigh the public interest in making the information available.

References to harm or prejudice include both actual harm or prejudice and risk or reasonable expectation of harm or prejudice. In such cases it should be considered whether any harm or prejudice arising from disclosure is outweighed by the public interest in making information available.

The exemptions will not be interpreted in a way which causes injustice to individuals.

1. Defence, security and international relations

- a) Information whose disclosure would harm national security or defence.
- b) Information whose disclosure would harm the conduct of international relations or affairs.
- c) Information received in confidence from foreign governments, foreign courts or international organisations.

2. Internal discussion and advice

Information whose disclosure would harm the frankness and candour of internal discussion, including:

- proceedings of Cabinet and Cabinet committees;
- internal opinion, advice, recommendation, consultation and deliberation;
- projections and assumptions relating to internal policy analysis; analysis of alternative policy options and information relating to rejected policy options;
- confidential communications between departments, public bodies and regulatory bodies.

3. Communications with the Royal Household

Information relating to confidential communications between Ministers and Her Majesty the Queen or other Members of the Royal Household, or relating to confidential proceedings of the Privy Council.

4. Law enforcement and legal proceedings

- a) Information whose disclosure could prejudice the administration of justice (including fair trial), legal proceedings or the proceedings of any tribunal, public inquiry or other formal investigations (whether actual or likely) or whose disclosure is, has been, or is likely to be addressed in the context of such proceedings.
- b) Information whose disclosure could prejudice the enforcement or proper administration of the law, including the prevention, investigation or detection of crime, or the apprehension or prosecution of offenders.

- c) Information relating to legal proceedings or the proceedings of any tribunal, public inquiry or other formal investigation which have been completed or terminated, or relating to investigations which have or might have resulted in proceedings.
- d) Information covered by legal professional privilege.
- e) Information whose disclosure would harm public safety or public order, or would prejudice the security of any building or penal institution.
- f) Information whose disclosure could endanger the life or physical safety of any person, or identify the source of information or assistance given in confidence for law enforcement or security purposes.
- g) Information whose disclosure would increase the likelihood of damage to the environment, or rare or endangered species and their habitats.

5. Immigration and nationality

Information relating to immigration, nationality, consular and entry clearance cases. However, information will be provided, though not through access to personal records, where there is no risk that disclosure would prejudice the effective administration of immigration controls or other statutory provisions.

6. Effective management of the economy and collection of tax

- a) Information whose disclosure would harm the ability of the Government to manage the economy, prejudice the conduct of official market operations, or could lead to improper gain or advantage.
- b) Information whose disclosure would prejudice the assessment or collection of tax, duties or National Insurance contributions, or assist tax avoidance or evasion.

7. Effective management and operations of the public service

- a) Information whose disclosure could lead to improper gain or advantage or would prejudice:
 - the competitive position of a department or other public body or authority;
 - negotiations or the effective conduct of personnel management, or commercial or contractual activities;
 - the awarding of discretionary grants.
- b) Information whose disclosure would harm the proper and efficient conduct of the operations of a department or other public body or authority, including NHS organisations, or of any regulatory body.

8. Public employment, public appointments and honours

- c) Personnel records (relating to public appointments as well as employees of public authorities) including those relating to recruitment, promotion and security vetting.
- d) Information, opinions and assessments given in confidence in relation to public employment and public appointments made by Ministers of the Crown, by the Crown on the advice or Ministers or by statutory office holders.
- e) Information, opinions and assessments given in relation to recommendations for honours.

9. Voluminous or vexatious requests

Requests for information which are vexatious or manifestly unreasonable or are formulated in too general a manner, or which (because of the amount of information to be processed or the need to retrieve information from files not in current use) would require unreasonable diversion of resources.

10. Publication and prematurity in relation to publication

Information which is or will soon be published, or whose disclosure, where the material relates to a planned or potential announcement or publication, could cause harm (for example, of a physical or financial nature).

11. Research, statistics and analysis

- a) Information relating to incomplete analysis, research or statistics, where disclosure could be misleading or deprive the holder of priority of publication or commercial value.
- b) Information held only for preparing statistics or carrying out research, or for surveillance for health and safety purposes (including food safety), and which relates to individuals, companies or products which will not be identified in reports of that research or surveillance, or in published statistics.

12. Privacy of an individual

Unwarranted disclosure to a third party of personal information about any person (including a deceased person) or any other disclosure which would constitute or could facilitate an unwarranted invasion of privacy.

13. Third party's commercial confidences

Information including commercial confidences, trade secrets or intellectual property whose unwarranted disclosure would harm the competitive position or a third party.

14. Information given in confidence

- a) Information held in consequence of having been supplied in confidence by a person who:
 - gave the information under a statutory guarantee that its confidentiality would be protected; or
 - was not under any legal obligation, whether actual or implied, to supply it, and has not consented to its disclosure.
- b) Information whose disclosure without the consent of the supplier would prejudice the future supply of such information.
- c) Medical information provided in confidence if disclosure to the subject would harm their physical or mental health, or should only be made by a medical practitioner.

15. Statutory and other restrictions

- a) Information whose disclosure is prohibited by or under any enactment, regulation, European Community law or international agreement.
- b) Information whose release would constitute a breach of Parliamentary Privilege.

