

Freedom of Information Act and Data Protection Act

1. Background

On 20th August the Information Commissioners wrote to the Chairs of most 'BoVs' (*sic*) informing them of the provisions of the Freedom of Information Act (FOIA) 2000 and the requirement under this legislation to produce a publication scheme. The Act becomes effective from 1 January 2005.

2. The FOIA publication scheme

Under the FOIA all public bodies must provide a 'publication scheme' of types of materials likely to be covered by the Act. This has been done centrally and Jo Jenkins of the National Council submitted a publication scheme for Boards which has been approved by the Commissioners. A copy is attached.

3. Application of FOIA

This part of the note sets out the general principles of the FOIA and crossover into the Data Protection Act (DPA) 1998. The two pieces of legislation set out the rights of the individual to obtain information:

The DPA sets out the right of the individual to see written and computer information kept about themselves (but no one else); and the FOIA is the right of the individual to see information kept by an organisation including IMBs, other than personal data and certain exemptions, of which 'security' would be the most likely one to be exempted.

4. What is likely to be requested?

DPA requests

a) *Requests from members.*

Board members may request their personnel file (if there is one), triennial review notes, past expenses claim forms. Provided these do not contain personal data about a third party they must be disclosed. The main area of contention is likely to be in relation to allegations of a discipline and conduct nature, the Secretariat must

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be consulted immediately if such requests for papers on this subject are received.

b) Requests from prisoners/detainees.

It should be noted that the prisoner/ detainee cannot 'trawl' for information, any request must relate to an approximate date or event. For example; applications or complaints where a Board member has made a note of an oral conversation; rota reports, serious incident reports or personal notebooks where a discussion about or with the prisoner/detainee has occurred. It should be noted that the applicants only have a right to information about themselves not a third party or general comment.

c) Legal Requests.

A request from a solicitor on behalf of the prisoner/detainee is acceptable provided a consent form signed by the prisoner/detainee is attached.

d) Requests from applicants who have not been accepted as Board members.

They may wish to check that there was no bias or discrimination against them. The Secretariat will have this information.

e) Request from members of the public.

Family and friends of prisoners/detainees may occasionally apply but they have no right of access to information.

f) Requests from staff.

A member of staff may wish to see information about them contained in a report. If a DPA request for papers is received from a member of staff the Secretariat must be consulted. A staff association (such as the POA) does not have a right to see DPA information on behalf of a member.

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FOIA requests

There are four main areas of information where an FOIA application is possible. It should be noted that the applicant cannot 'trawl' for information, any request must relate to an approximate date, publication or event.

a) Annual reports.

As these should be published anyway, Boards will be obliged to provide a copy to an applicant or inform them where they can obtain a copy, e.g. the prison library.

b) Board meeting minutes.

Board meeting minutes can be accessed and if a member of staff or prisoner/detainee is identified in the minutes they can also claim access to the relevant part under the DPA.

c) Serious incident reports.

Any request to the Board must be referred to the Secretariat immediately.

d) Rota reports/note books/segregation reports.

These are disclosable under FOIA and specific personal details also fall under the DPA.

5. What Boards Should Do

Section 20 of the Freedom of Information Act 2000 requires that Boards adopt the model publication scheme titled 'Model Scheme for Independent Monitoring Boards.' The Board Chair must therefore complete and return the attached 'Declaration Form - Freedom of Information Act 2000 – Publication Schemes' to Steve Kilbey, Deputy Head of the IMB Secretariat as soon as possible and certainly no later than 1st January 2005.

Steve Kilbey is the Information Access Representative (IAR) for the Secretariat and all requests for information should be passed

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to him for action. He will examine and deal with the request and may need to contact the Board for more information. The Board Chair will be copied into any correspondence. The Board should keep a record of the application and actions.

Members should familiarise themselves with PSO 9020 which deals with FOI and DPA.

Time scale

It is critically important that the time scales for response of 20 working days for FOI applications and 40 working days for DPA applications are adhered to (see below).

6. The IAR in the Secretariat will consider the following:

- a) Whether the application is a 'trawl' for information, for example "send me everything that has been written about me", or a genuine request for information. If it is not a specific request then the application can be refused.
- b) Whether the information requested is 'Board' or 'prison/IRC' specific. If 'prison/IRC', then the applicant is referred to that authority.
- c) Whether there are any security issues in the requested information. These would be blanked out.
- d) Whether to charge a fee.
Under the DPA a fee of £10 per application may be charged. It is not economical for the Secretariat to charge that fee.

7. Boards Should be Aware Of:

- a) Time scales.
Set time limits are 40 working days from receipt of an application for DPA requests and 20 working days for FOI requests. If there is a need to establish the scope of the application it is from the date of the received reply from the applicant. Boards should note the date of receipt of the application and when it is forwarded to the Secretariat.
- b) Keeping of records and files.

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Rota and application reports, minutes and other reports of the Board should be kept for 6 years.

c) Sharing of Data

All members should expect a certain amount of personal data to be freely available to colleagues, such as their telephone number, address, and email. Other data would be available only to the Chair, for example expenses claims and training records. The clerk will normally have access to all personal data with the possible exception of confidential information such as conduct and discipline reports. If there is any dispute over data held on members the Secretariat should be contacted.

d) Facts and opinions.

It is important that all notes, records and files are statement of fact, not opinion. All paperwork should be properly filed.

e) Publications/reports from the prison/IRC or others is not your data and is not disclosable. If you write about it, that documentation is disclosable.

Jo Jenkins/Steve Kilbey

December 2004