

GUIDANCE ON THE FREEDOM OF INFORMATION ACT 2000

1. *What is the Freedom of Information Act?*

The Freedom of Information Act 2000, which came about as a result of one of the major commitments in the Labour Party's 1997 manifesto, creates new rights of public access to information held by public authorities, as defined under the Act. The Act only applies to England, Wales and Northern Ireland. A separate Freedom of Information Act applies to Scotland.

The Act specifically defines GPs as public authorities. The Information Commissioner, who regulates the Act, has ruled that GPs may act co-operatively within their practice structure to discharge their obligations under the Act.

2. *What does this mean for GPs?*

From January 2005, the Act will oblige each practice to respond to requests about the information that they hold and have recorded in any form and will create a right of access to that information. Practices must:

- (i) Have a publication scheme in place. The deadline for publishing the publication scheme was 31st October 2003.
- (ii) Respond to individuals' requests for information **from 1st January 2005**.

3. *The Publication Scheme*

Practices should have a publication scheme in place. This is basically a list or index of;

- the types of information that a practice holds
- a description of how it can be obtained
- an explanation of any charges that might apply (regulated by the Act)
- and an explanation of the types of information that the GP holds but cannot make available (and why).

The NHS set up a Freedom of Information Act project team to give advice and guidance to the NHS on its duties under the Act. This team worked with the BMA, through its medico-legal committee, to produce a model publication scheme for GPs.

The model publication scheme can be access on the Information Commissioner's web site: <http://www.informationcommissioner.gov.uk/>

The NHS Freedom of Information website now has available an online publication scheme tool for independent practitioners: <http://www.foi.nhs.uk>

There is an example of how to customise the model on Wessex LMCs' web site at <http://myweb.tiscali.co.uk/lmclive/genguide/ifo/ifo.html>

4. *Requests for Information*

From January 2005, any individual, anywhere in the world, will be able to make a request to a practice for information. An applicant is entitled to be informed in writing, by the practice, whether the practice holds information of the description specified in the request and if that is

the case, have the information communicated to him. An individual can request information, regardless of whether he/she is the subject of the information or affected by its use. Requests must:

- (i) be made in writing (this can be electronically e.g. email/fax)
- (ii) state the name of the applicant and an address for correspondence
- (iii) describe the information requested

A practice must comply with a request within 20 working days. Where a fee is required (see below), the deadline will be extended until the fee is paid.

The applicant can request a copy of the information, ask to inspect the information or request a summary of the information. The Act requires practices to try and provide the information in the requested format. A practice is not obliged to comply with repeated or vexatious requests for information. Therefore a practice can refuse to supply identical or substantially similar information to any one person if a reasonable time has passed since the previous request.

5. What information *must* GPs make available?

The basic premise of the Act, that **all information should be disclosed unless there is an overriding reason not to.**

Some types of information are exempt from the requirement to make them available. These include:

- personal information, the handling and disclosure of which is regulated by the Data Protection Act 1998
- information whose disclosure would harm the commercial interests of the public body or of a third party
- information whose disclosure would harm the public good to an extent that is greater than the presumed public good of releasing it.

However, only the exempt part of the document can be withheld. The rest of the document must be released when requested.

The majority of the information requested, should be covered in the practice publication scheme. Information which can be obtained elsewhere does not need to be disclosed, for example information which is on the Department of Health website. Also if an individual makes a request for information that is included on the practice publication scheme, the request can be declined. Practices will therefore save themselves time by ensuring arrangements are in place to ensure that their publication schemes are up to date.

6. Does this mean that GPs will have to make their income public information?

There is a particular expectation that public authorities will account for how they spend public funds. There can be no argument about the fact that a practice's NHS funding represents public money, as does the expenditure on drugs prescribed by the clinicians in the practice. Only if a practice can make a cogent case that its commercial interests would be harmed by disclosing details of the public money it is responsible for spending would it be justified in not disclosing that information.

It should be noted that the level of disclosure agreed for the publication scheme would not allow an individual GP's personal income to be calculated. When completing the model scheme practices may prefer to use the phrase "total practice funding", rather than "total practice income". Clearly the more information that appears in the publication scheme the fewer requests for specific pieces of information the practice may have to respond to after 1 January 2005.

The GPC will issue further information about the disclosure of QOF results in the coming weeks.

7. Difference between disclosures under the Data Protection Act and Freedom of Information Act

Put simply, the Data Protection Act covers personal data, the Freedom of Information Act covers any other information held by the practice e.g. procedures, governance etc. If an applicant asks to see personal data or third party information, this would be exempt under the Freedom of Information Act. The applicant would need to submit a subject access request under the Data Protection Act.

8. *What happens if GPs do not comply with the Act?*

If a person has made a request to a GP for information, and that information has not been forthcoming from the GP under the Freedom of Information Act, then that person may have the right to apply to the Information Commissioner on a decision as to whether or not the request has been dealt with according to that Act. In response the Information Commissioner may serve a decision notice on the GP and set out any steps that the GP is required to comply with in terms of compliance with the Act. If a GP is therefore uncertain whether or not certain information can be disclosed to a particular individual, and reasonably certain that the information sought falls within one of the exemptions, especially if that information is of a personal nature, best practice would probably be that the GP does not reveal that information and awaits direction from the information Commission.

If a practice fails to respond to a decision notice, an enforcement notice will be served and non-compliance could be regarded as contempt of court, for which a judge may impose an unlimited fine or imprisonment. An appeals process is included in the Act.

9. *Will GPs be able to charge fees for access to information?*

GPs will not be able to charge fees for access to information unless it costs more than £450 to retrieve and collate the information. GPs will, however, be able to charge any reasonable costs for copying, printing, postage and other disbursements. The information can be withheld until a fee is paid. The applicant will have three months from the date of notification to pay the fee before the request lapses. Regulations governing fees have not yet been laid. This section will be updated when further details are available.

10. *Code of Practice*

The Secretary of State will produce a code of practice for public authorities to follow. This is sometimes referred to as the Access Code and will deal with how to handle requests for information e.g. the level of advice and assistance expected, transferring requests from one public authority to another, consulting with third parties who may be affected by disclosure and dealing with complaints.

The Lord Chancellor will produce a code of practice providing guidance on keeping, management and destruction of records.

11. Further information is available at:

Information Commissioners Website:

<http://www.informationcommissioner.gov.uk/>

NHS Freedom of Information Website:

<http://www.foi.nhs.uk>

Department of Constitutional Affairs guidance:

<http://www.dca.gov.uk/foi/guidance/index.htm>

The Freedom of Information Act 2000 Regulations:

<http://www.legislation.hmso.gov.uk/acts/acts2000/20000036.htm>

Government White Paper Your Right to Know: <http://www.archive.official-documents.co.uk/document/caboff/foi/foi.htm>