SCOTTISH MINISTERS' CODE OF PRACTICE ON THE DISCHARGE OF FUNCTIONS BY PUBLIC AUTHORITIES UNDER THE FREEDOM OF INFORMATION (SCOTLAND) ACT 2002

Laid before the Scottish Parliament on 6th September 2004
pursuant to section 60(5) of the
Freedom of Information (Scotland) Act 2002

Prepared in consultation with the Scottish Information Commissioner

CONTENTS

INTRODUCTION

	Paragraph
PART I - General	
Main Features of the Freedom of Information (Scotland) Act 2002	1
Duty to provide advice and assistance	2-6
Means of providing information - equality issues	7- 9
Publication Schemes	10-12
Copyright	13-14
Training	15-16
PART II	
Provision of advice to persons making requests for information	17-22
Vexatious requests	23-24
Repeated requests	25-26
Timeliness in dealing with requests	27
Handling multiple requests for information or requests which appear to be part of an organised campaign	28-29
Transferring requests for information	30-34
Information provided in confidence	35
What is confidentiality?	36-40
Public sector contracts	41-49
EU Procurement Regulations	50
Designation as Scottish Public Authority	51
Accepting information in confidence from third parties	52

Consultation with the UK Government and non-devolved public bodies 53

Personal data 54

Environmental Information Regulations 55-57

Information intended for future publication 58

Fees for the provision of information 59-61

Monitoring 62

PART III

Requirement for review 63-70

Refusal of request 71

Substantial prejudice 72

Public interest 73-75

Enforcement of the Code 76-79

Availability

Annex 1 Other relevant Acts and Guidance Documents

Annex 2 The Disability Discrimination Act 1995

Annex 3 Guidance on Charging Fees

INTRODUCTION

The Freedom of Information (Scotland) Act 2002 ("the Act") received Royal Assent in May 2002. Scottish Ministers consider that the Act will assist in fostering greater openness and transparency across the Scottish public sector. The disclosure of information, whether proactively or in response to specific requests, serves to strengthen accountability and increase public involvement in decision-making.

Section 60 of the Act requires the Scottish Ministers to issue guidance to public authorities on discharging their functions under the Act. This Code of Practice fulfils that duty and has been prepared in consultation with the Scottish Information Commissioner.

The Code provides best practice guidance to public authorities and its adoption will help authorities to comply with their duties under it. It is not a substitute for legislation nor do its provisions have the force of law. However, as part of his role, the Scottish Information Commissioner will promote observance of the Code, including this Introduction. Should an authority fail to comply with the Code, they may be failing in their duties under the Act. Authorities should, therefore, seek legal advice as appropriate on general issues relating to the implementation of the Act or its application to individual cases to ensure that they comply with statutory provisions. Authorities should also ensure that they comply with existing duties under other legislation, for example, the Disability Discrimination Act 1995, the Race Relations (Amendment) Act 2000, the Data Protection Act 1998 and the Environmental Information (Scotland) Regulations 2004.

Part I of the Code introduces the main features of the Act and authorities' duties under it; Part II expands on this, providing further advice to authorities on specific functions; and Part III concentrates on refusals to disclose information and on appeals against public authorities' decisions.

An authority's ability to meet the requirements of the legislation and to bring about a culture of openness is likely to depend significantly on leadership from the top. Scottish public authorities should therefore ensure that there is a clearly established responsibility at a senior level within the organisation for overseeing the implementation of the Act and for meeting the challenges and opportunities of FOI.

Under the Act, any information held by a Scottish public authority may be requested. Authorities should, therefore, ensure that they maintain a complete and accurate record of their business, both as a matter of good records management practice and in order that such information is easily accessible when a request is received under the Act. Authorities should not omit recording information that might be in the public interest in order to prevent disclosure. Furthermore, authorities should be aware that under section 65 of the Act, it is an offence, punishable by a fine, to "alter, deface, block, erase, destroy or conceal a record with the intent of preventing disclosure".

Further guidance on records management is set out in the Code of Practice on Records Management, issued by the Scottish Ministers under section 61 of the Act.

Guidance on the release of environmental information is contained in the Code of Practice on Access to Environmental Information issued by the Scottish Ministers under section 62 of the Act.

This Code of Practice applies to all Scottish public authorities as defined in section 3(1) of the Freedom of Information (Scotland) Act 2002. Words and expressions used in this Code have the same meaning as the same words and expressions used in that Act. In particular, authorities may find it helpful to refer to section 73 of the Act ("Interpretation").

PART I

Main Features of the Freedom of Information (Scotland) Act 2002	**Act Ref.**
1. The main features of the Act are:	
• the establishment of a general right of access to recorded information of any age held by a wide range of bodies across the public sector in Scotland, subject to certain conditions and exemptions;	**1**
• in relation to most exempt information, the information should only be withheld if the public interest in withholding it is greater than the public interest in releasing it;	**2(1)(b)**
• the creation of a new office of Scottish Information Commissioner (the Commissioner), with wide powers to promote good practice and to enforce the rights created in the Act;	**42**
• a duty on each Scottish public authority to adopt and maintain a publication scheme, approved by the Scottish Information Commissioner. Publication schemes must specify the classes and manner in which information is, or is intended to be, published, together with an indication of whether the information will be available free of charge or on payment of a fee;	**23**
• a duty on the Scottish Ministers to issue Codes of Practice containing guidance on specific issues (under section 60 and 61 of the Act).	**60, 61**
Duty to provide advice and assistance	
2. The Act places a duty on public authorities to provide advice and assistance to applicants and potential applicants as far as it is reasonable to expect the authority to do so. An authority following the guidance in this Code in this respect will be deemed to have complied with its duty to provide advice and assistance. This is dealt with in more detail in Part II.	**15**
3. Staff working in public authorities in contact with the public should be aware that many applicants may be unaware of their rights or unfamiliar with the legislation and staff should be prepared to explain the key provisions of the Act to potential applicants who might benefit from assistance. Staff should also be able to explain the procedures which the authority has put in place for complying with the Act (and to provide guidance on access to records for which the authority knows there is particular demand). Authorities may find it helpful to establish a "disclosure log", i.e. a publicly available description of some or all of the information which the authority has previously released under the Act. Staff should be familiar with any such log and be able to provide guidance to potential applicants on how to make use of it.	

4. Authorities may wish to consider designating a specific individual as Information Officer, through whom all requests for information could be channelled, or, if appropriate, setting up a discrete unit to handle requests. (Larger or more devolved or complex authorities may wish to consider designating a number of specific individuals to cover the scope of the organisation.) This does not detract in any way from the responsibility of staff generally to provide advice and assistance to applicants.

5. Staff should also be aware that, in giving assistance, an applicant's reasons for requesting the information are not relevant. Applicants should not be given the impression that they are obliged to disclose the nature of their interest or that they will be treated differently if they do so.

6. Where an authority falls short of the Code's guidance on providing advice and assistance, it should be prepared to explain to the Commissioner why it considered the level of advice and assistance provided to be reasonable in the circumstances. Authorities should note that where there is a significant departure from the approach to the provision of advice and assistance, as set out in this code, they may be breaching their statutory duties under section 15. **15**

Means of providing information - Equality Issues

7. Equality issues have an impact on the provision of information under the Act. The Act specifically mentions disability and authorities should also bear in mind their duties - statutory or otherwise - to groups with particular needs. Authorities should note, when considering the means of providing requested information, that whereas in almost all circumstances a *written* response will be appropriate, they should have due regard to their existing duties under the Disability Discrimination Act 1995 (DDA) and other legislation. These duties are summarised at Annex 2. Authorities should be flexible in their approach, interpreting broadly the provisions of the DDA. They should also ensure that, as a matter of practice, disabled applicants are provided with information in the format or means they prefer, except in exceptional and extreme circumstances. The cost of responding to any FOI request in an alternative format should not, however, be passed on to the applicant. **11**

8. Authorities are obliged to deal with FOI requests in the same way as they discharge any of their other statutory duties. For example, where a local authority decides to disseminate information in an area with a high proportion of residents from a particular ethnic community, that authority, under existing equality legislation, should consider translating the information into the language of that community. Different considerations may apply where it is a question of disclosing information to an individual; the Act does not require information to be translated before release but authorities will want to consider their obligations under race relations and other legislation.

9. Many people who use the web have disabilities of one form or another, which could be sensory or motor disabilities. It is very important that any web page produced by public sector bodies is as available to these users as to any other. It is now mandatory that government websites comply with the minimum level of

the World Wide Web Consortium's Web Accessibility Initiative. More information about access technology can be found at: http://e-government.cabinetoffice.gov.uk/Resources/WebGuidelines/fs/en

Publication Schemes

10. All Scottish public authorities must adopt and maintain a "publication scheme", publish information in accordance with it and review the scheme from time to time. The Commissioner will approve a scheme covering each public authority, and has published Guidance on the preparation, submission and maintenance of such schemes at: **23**

http://www.itspublicknowledge.info/pscheme.htm

The publication scheme will set down: **23(2)**

- the classes of information which are published or will be published;
- the manner in which the information of each class is, or is intended to be published; and,
- whether the information is, or is intended to be, available free of charge or on payment of a fee.

11. The routine publication of more information is likely, over time, to lead to a reduction in the number of individual requests for specific pieces of information due to the operation of the exemption applicable in cases where the information is otherwise accessible. Authorities, therefore, have an incentive to include more information in their publication schemes as this will obviate the need to provide that information in response to a request under section 1. However, it would be good practice for authorities to keep a log of requests made for information which is not currently included in their publication schemes. Authorities could then consider the need to add that class of information as a new class to be covered by the scheme. **25**

12. The publication scheme should also include details of the authority's procedures for handling requests for information. The procedures should include an address or addresses (including an e-mail address where possible) to which applicants may direct their request. A telephone number and fax number should also be provided and, where appropriate, the name of an individual who can provide assistance.

Copyright

13. Public authorities should be aware that information provided under the Act may be subject to copyright protection. Supplying information under the Act does not convey a right to re-use that information in a way that would infringe copyright, for example by making multiple copies or issuing copies to the public

or for inclusion in commercial publications. These activities will often involve obtaining the permission of the authority that provided the material. Permission is generally granted in the form of a copyright licence. HMSO and the Office of the Queen's Printer for Scotland (OQPS) have issued guidance which explains the distinction between access and re-use in more detail.

14. Copyright works made by central government qualify for Crown copyright protection; however, various categories of Crown copyright material can be reproduced without a formal licence. Where a formal licence is required then in the majority of cases this can be obtained by applying for a *Click-Use licence* online. OQPS website provides details of categories of Crown copyright material where this applies, including examples of information where the copyright has been asserted but waived. Such information can be copied or reproduced without formal permission provided it is copied accurately, is not used within a misleading context and provided that the source of the material is identified and the copyright status acknowledged. This includes the following: government press notices, legislation, ministerial speeches, consultation documents, documents featured on official websites (except where expressly indicated otherwise), headline statistics and unpublished public records. More details of these categories and the Click Use licensing arrangements can be found at:

http://www.oqps.gov.uk/copyright/pubcopyright_gn.htm

Training

15. All written (and electronic) requests for information submitted to Scottish public authorities should be dealt with in accordance with the provisions of the Act. It is, therefore, essential that all relevant personnel are familiar with its provisions, the associated Codes of Practice and any guidance on good practice issued by the Scottish Information Commissioner. Authorities should ensure that appropriate staff training is provided. In planning and delivering training authorities should be aware of other provisions affecting the disclosure of information such as Environmental Information Regulations and the interaction between the Act and the Data Protection Act. (See also Annex 1)

16. The Executive has commissioned the production of a training package which is capable of being adapted by Scottish public authorities to meet their specific needs. This is available at:

http://www.scotland.gov.uk/about/LPS/LPS-CPS/00018775/introduction.aspx

PART II

Provision of advice to persons making requests for information

17. Every public authority must be prepared to provide advice and assistance to those making requests for information. The guidance set out below should not be regarded as exhaustive. **15**

18. Any request for information must be made in writing or any other format capable of being used for subsequent reference (this includes requests transmitted by electronic means, including by fax or e-mail or through an authority's web-site). Where someone is unable to frame his or her request in such a way, the authority should ensure that appropriate assistance is given to enable that person to make a request for information. While there is a general duty to provide advice and assistance to those making requests for information, particular consideration should be given to those with a disability or with communication difficulties. **8(1)(a)**

19. In considering what assistance would be appropriate in the circumstances, the request should be discussed with the applicant and practical advice offered. This might include, for example, offering to take a note of the request over the telephone and then sending the note to the applicant in their preferred format for confirmation. In this case, the written note of the telephone request, once verified by the applicant, would constitute the request for information. In such instances the authority should ensure that the applicant is also supplied with a stamped addressed envelope to assist in lodging the request. The statutory time period for compliance would begin upon receipt of the verified note or of alternative confirmation from the applicant. Where facilities are available, the call itself could be taped, with the applicant's consent, which would then constitute the request for information. Alternatively, the authority may suggest that the request is recorded and forwarded or that another person or agency may be able either to assist them with the application or to make the application on their behalf. The key issue for authorities is the need to respond flexibly to requests for information, and to provide the necessary level of advice and assistance to all applicants.

20. Where the applicant has provided insufficient information to enable the authority to identify and locate the information sought, or where the request is unclear, the authority should help the applicant to describe more clearly and particularly what information they require. Authorities should be aware that the aim of providing assistance is to clarify the nature of the information being sought not to determine the applicant's aims or motivation. Where more information is needed to clarify the request, it is important that the applicant is contacted as soon as possible, preferably by telephone, fax or e-mail. The 20 day period will run from the date of clarification but authorities should note that the Commissioner will take a hard stance against any authority that uses clarification as a means of delaying dealing with an application. Appropriate help could include: **10(1)(b)**

- providing an outline of different kinds of information which might meet the terms of the request;

- providing access to detailed catalogues and indexes, where these are available,

to help the applicant to see the nature and extent of the information held by the authority;

- providing a general response to the request setting out options for further information which could be provided on request; or

- an indication of what information could be provided within the cost ceiling, in instances where a request would be refused on cost grounds.

This list is not exhaustive and authorities should always be flexible in offering advice and assistance taking into account the circumstances of each individual case.

21. In seeking to clarify what is sought, authorities should always bear in mind that applicants cannot reasonably be expected to possess identifiers, such as a file reference number or a description of a particular record, unless this information is made available by the authority for the use of applicants.

22. If, after all reasonable assistance has been given, the applicant still cannot describe the information requested in a way which enables the authority to identify and locate it, then the authority is not expected to ask for further clarification. However, it must disclose any information relating to the application which has been found and which can be disclosed under the provisions of the Act (i.e. is not subject to any exemption). In these circumstances, the authority should explain why it cannot take the request any further and provide details of its own review procedure and the applicant's rights to apply to the Commissioner for a decision.

Vexatious Requests

23. An authority is not obliged to comply with a vexatious request. The Act does not define the term vexatious and, in the first instance, it will be for the authority to decide whether requests are vexatious. However, irritation or nuisance caused by the applicant or by receipt of the request should play no part in an authority's consideration of whether or not an application is vexatious. Authorities should be prepared to provide justification for their approach to the Commissioner, and their decisions in this respect should, therefore, be based on clear-cut reasoning. Factors which an authority might take into account could include:

- whether the request has already been rejected on appeal to the Commissioner and the applicant knows this;
- whether there has been unreasonable refusal or failure to identify sufficiently clearly the information required;
- whether there has been unreasonable refusal or failure to accept documented evidence that the information is not held;
- whether the request can be shown to be clearly intended to disrupt the authority's work rather than for the purpose of obtaining information.

24. This list is not exhaustive but the power to refuse to respond to a request on the grounds contained in section 14 of the Act should be used sparingly, and should not be abused simply to avoid dealing with a request for information.

Repeated Requests

25. Under the same section, the Act also provides that an authority, which has already complied with a request for information from a person, can refuse to comply with a subsequent request from that person which is identical or substantially similar unless there has been a reasonable period of time between the making of the request complied with and the making of the subsequent request. If the information has changed between applications, this is unlikely to be viewed as a repeated request. For example, requests could be made once per week for up to date figures. Public authorities who receive what they consider to be repeat requests have the option of making the information available in their publication schemes. What constitutes a "reasonable period of time" will depend on the circumstances of the case but, as with decisions about vexatious requests, authorities should be prepared to justify their reasoning to the Commissioner.

14

26. Where an authority considers a request to be vexatious or repeated, it is not required to comply with a request. Neither is it obliged to conduct a review if the grounds for the initial refusal were made under section 14. However, in either case, notice must be given to the applicant of the rights of application to the Commissioner and of appeal.

21(9)

47(1), 56

Timeliness in dealing with requests for information

27. Public authorities should comply with a request for information as soon as possible but must, in any event, comply not later than 20 working days after receipt of the request. It is essential that authorities respond to requests in good time. This is particularly important where it is clear that the requested information is not held by them and the applicant needs to direct the enquiry elsewhere, or if the applicant has a disability and requests information in an alternative format or by alternative means.

10

Handling multiple requests for information or requests which appear to be part of an organised campaign

28. Where an authority is not required to comply with a number of related requests because the cumulative cost of meeting these requests would exceed the cost threshold (as set out in Fees Regulations: see also paras 59-61 and Annex 3) and where the information could have been disclosed had the cost not exceeded this limit, the authority should consider whether the information can be disclosed in another, more cost-effective way. For example, the authority should consider whether the information is such that publication on the authority's web-site, and a brief note of the web-site reference to each applicant, would bring the cost within the limit.

12(1)

12(4)

29. Where an authority does not disclose the information in another, more cost-effective way, it should be able to justify its approach to the Commissioner.

Transferring requests for information

30. The Act does not include procedures for the transfer of requests from one authority to another, and it will not generally be appropriate for authorities to do so. Where a request has been made for information which is not held by an authority, that authority should inform the applicant promptly that it is unable to provide the information sought. The most appropriate means of doing this will be by a notice under section 17 of the Act (i.e. notice that information is not held). **17**

31. Where a public authority does not hold the requested information but is aware that it is held by another public authority, consideration should be given as to the most helpful way of assisting the applicant. It may be sufficient simply to provide the applicant with contact details of the authority holding the information and to suggest that the applicant re-applies to that authority. However, applicants should only be redirected in this way if the authority receiving the original request has confirmed that the information sought is, indeed, held by another public authority, and if securing that confirmation does not unreasonably delay a response (under s.17) to the applicant. An authority should bear in mind that where it possesses a copy of a record produced by another authority it "holds" it for the purposes for the Act and should deal with the request itself and not transfer it to the originating authority. **1(4)**

32. When an applicant has made clear that the request for information should be forwarded to another authority if all or part of the material sought is not held by the public authority to which the request has been made, it will normally be of assistance to transfer the request:-

- having confirmed that another authority holds the relevant information; and
- having advised the applicant in writing of the transfer, the revised contact details and that the statutory period for dealing with the request will run from receipt of the transferred request.

33. In instances where an authority holds most of the information requested of it, and can establish that another public authority holds the remainder of the requested information, consideration should be given as to whether that additional information can be supplied and included in one response to the applicant. This is only likely to be of assistance to an applicant where there is no significant delay in responding as a result, and where no additional costs are involved.

34. The transfer of requests from one authority to another may be difficult to administer and may also have implications for authorities' responsibilities under the Data Protection Act 1998. In particular, an applicant who makes a request to one authority may have reasons for not wishing the request to be circulated to other authorities; the request may contain personal information and the identity of the applicant may itself be personal information. Further, it is important that applicants are aware who is dealing with their request for information, when the statutory timescale for responding to their request begins, and what their rights are under the Act. In most instances, therefore, the guidance provided at paragraphs 30 to 32 above should form the framework for responses where information sought is not held.

Information provided in Confidence

35. By virtue of sections 36(2) and 2(2)(c) of the Act any information the disclosure of which would constitute an actionable breach of confidence attracts an absolute exemption. The Act does not require that the exemption be subject to the public interest test but it is generally accepted in common law that an obligation of confidence cannot apply to information the disclosure of which is necessary in the public interest. **36(2)** **2(2)(c)**

What is confidentiality?

36. A duty of confidence will arise when one person imparts information to another in the expectation that the information will only be used or disclosed in accordance with his or her wishes. If there is a breach of confidence the person who provided the information or any other person affected by the breach may be able to take action in the courts.

37. There are three requirements for an action for breach of confidence:-

- that the information must have the necessary quality of confidence;
- that it must have been communicated in circumstances imposing a duty of confidence; and
- that there must be unauthorised use of the information to the detriment of the party communicating it.

38. In order to decide whether an obligation of confidence has arisen in a particular case, authorities will need to consider both the nature of the information itself and the circumstances under which the information was given. There are essentially two circumstances in which an obligation of confidence can arise:-

- where there is an express term in a contract or agreement, whether written or verbal, that confidentiality will apply; or
- where the nature and circumstances of the dealings between parties imply confidentiality, such as advice between a patient and health practitioner, or client and social worker.

39. The duty of confidence, however, is not absolute and the courts recognise three broad circumstances where confidential information can be disclosed: disclosures with consent; disclosures required by law and disclosures where there is an overriding public interest. **2(1)(b)**

40. Authorities should always consider carefully any request to hold information in confidence and should make clear that they cannot guarantee that information will not be disclosed unless the requirements of section 36(2) (or some other exemption) are met.

Public Sector Contracts

41. When entering into contracts (in this context "contract" should be read as including any other form of agreement or undertaking) public authorities should refuse to include terms which restrict the disclosure of information held by the authority and relating to the contract beyond the restriction permitted in the Act i.e. the information constitutes a trade secret or its disclosure under the Act would, or would be likely to, prejudice substantially the commercial interests of any person. **33**

42. Particular care is needed in the treatment of the above. Companies will need to be confident that an authority will apply its general commitment to openness in a way which does not damage their legitimate interests. Public authorities should, ideally before accepting information regarded by the company as commercially sensitive, take steps to ensure that the company understands the possible implications of the Act. Provisions included in the contract could make clear the need to comply with the Act and to account for public expenditure.

43. When entering into a contract, pressure may be put on authorities to accept confidentiality clauses so that information relating to particular terms of the contract will be exempt; for example, its value and performance, arrangements for monitoring progress and performance under the contract, incentives for early completion or penalty clauses for failing to meet targets. Public authorities should consider carefully whether the information is, in fact, confidential and also the public interest in disclosing any or all of the terms. Public authorities should therefore resist such clauses, wherever possible.

44. Where, exceptionally, it is necessary to include non-disclosure provisions in a contract, the public authority could agree with the contractor a schedule of the contract which clearly identifies both information which should not be disclosed and information which will be released. Any acceptance of such confidentiality provisions must be for a good reason, be capable of being justified to the Commissioner and include the proviso that information which is not, in fact, exempt under the terms of the Act or whose disclosure is required on public interest grounds, may have to be disclosed regardless of any agreement.

45. It is for the public authority to disclose information – not for the contractor. However, an authority may wish to protect some information which it has provided to the contractor and which is exempt under the Act from disclosure by the contractor. In order to avoid unnecessary secrecy, any such constraints should be drawn as narrowly as possible and according to the individual circumstances of the case. Apart from such exceptional cases, authorities should not impose terms of secrecy on contractors.

46. While the public interest will rarely justify disclosure of a trade secret, there will be circumstances where adverse commercial impacts are not a sufficient justification for non-disclosure. Where disclosure is necessary for the protection of public health, public safety or the environment, for example, such considerations may outweigh financial loss or prejudice to the competitive position of a third party. **33**

47. There may be cases where information has been received from a third party and to disclose that information without their prior consent would constitute an actionable breach of confidence. Where this may be the case, authorities should consider discussing with the third party whether the requested information is still to be regarded as confidential.

Consultation should take place where:

- the views of the third party may help the authority to determine whether an exemption under the Act applies to the information requested: or
- the views of the third party may help the authority to determine where the public interest lies.

Consultation will be unnecessary where:

- the authority does not intend to disclose the information in any case because of some other legitimate ground under the terms of the Act; or
- the views of the third party bear no influence on the decision of the authority, for example, where there is other legislation either preventing or requiring disclosure.

48. An authority is not relieved of its obligation to disclose information under the Act or its duty to reply within the statutory time should a third party fail to respond to consultation or fail to respond within the given time frame. However, in circumstances where disclosure of that information without the prior consent of the third party could constitute an actionable breach of confidence (see also para 37), authorities may wish to seek legal advice.

49. The general aim should be to facilitate more effective access to information about the procurement of public services. This will, in turn, encourage better internal management, greater accountability and best value within public authorities. Authorities may wish to consider including details of contracts in their publication schemes.

EU Procurement Regulations

50. The regulations implementing the Directives provide for compliance by authorities with a contractor's reasonable confidentiality requirements. The proposed new consolidated public sector procurement Directive (2004/18/EC) shortly to be adopted has a tighter confidentiality provision; it will prohibit the disclosure by contracting authorities of information which has been designated as confidential by contractors. However, this provision is stated to apply in accordance with national law so authorities should note that non-disclosure will still need to be brought within the confidentiality exemption in FOI.

Designation as Scottish Public Authority

51. Where an authority arranges, under contract, for another person or body to

provide services which are normally a function of that authority, the Act makes provision for the Scottish Ministers to designate that person or body as a public authority. The Scottish Ministers must consult the person or body before a decision to so designate is taken. Therefore, some non-public authority contractors may, in due course, be brought within the scope of the Act, albeit only in respect of the services provided under contract. Given the responsibilities associated with any such designation, it may be prudent for authorities to consider at an early stage in the procurement process, whether it would propose to the Scottish Ministers designation of that company under section 5 of the Act. It would be good practice to advise potential contractors early so that such an eventuality can be built into their plans. The authority will also need to review its own information requirements in such an event, so that it can still satisfy the requirements of accountability and transparency in carrying out its functions.

5(2)(b)

Accepting information in confidence from third parties

52. Information should only be accepted in confidence if it is necessary for the authority to obtain that information in order to carry out its function and it would not otherwise be provided or could not otherwise be obtained. Furthermore, authorities should not agree to hold information in confidence if it is clearly not confidential in nature. If an authority accepts a confidentiality provision, it must have a good reason for doing so and must be able to justify its decision to the Commissioner.

Consultation with the UK Government and non-devolved public bodies

53. Authorities should consult with the relevant UK Department before disclosing information provided by or directly concerning that administration, except where:

- the views of that department can have no effect on the decision of the authority. This may be the case where there is other legislation which requires the information to be disclosed or where there is no applicable exemption under the Act; or
- in the circumstances, consultation would be disproportionate.

Personal Data

54. When dealing with requests for personal data an authority should first of all determine whether the request falls under the FOI Act or under the Data Protection Act 1998. If the request is for personal data about the person requesting the information there is no right of access under the FOI Act. Such a request should be dealt with under the terms of the Data Protection Act 1998. If, however, the request is for personal data about someone other than the applicant i.e. third party data, the request should be dealt with under the FOI Act. There is an exemption in section 38 of the FOI Act if disclosure of the third parties personal data would breach any of the Data Protection principles.

Environmental Information Regulations

55. Authorities should be aware that requests for access to environmental information may need to be responded to under separate "environmental information regulations" (EIRs). The Environmental Information (Scotland) Regulations 2004 will replace the existing environmental information regulations of 1992 and 1998. The new regulations derive from European Directive 2003/4/EC, which in turn implements the UNECE Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters ("the Aarhus Convention"). Requests for information under EIRs should be dealt with in line with the Code of Practice issued under section 62 of the Act.

56. The new regulations align closely with the FOI regime in order to help Scottish public authorities administer the two regimes and to make it easier for the public to understand. However, there are some differences between the two regimes, primarily because of the need to implement fully the European directive. The following paragraphs set out the key differences and similarities between the existing and proposed new EIRs and between the EIRs and the provisions of the FOI (Scotland) Act 2002.

Main differences between old and new EIRs

- The 1992 regulations cover the UK – the 2004 regulations extend to Scotland only;
- Definitions of environmental information and the bodies that are affected are revised;
- In most cases the time limit which an authority has to respond to a request is reduced to 20 working days as compared to 2 months under the 1992 regulations;
- Scope to withhold information in relation to emissions to the environment is narrowed;
- A public interest test has been introduced; and
- The Scottish Information Commissioner will act as appellate authority in considering appeals by dissatisfied applicants.

Main differences between FOI and EIRs

- Requests for environmental information can be in any form;
- Additional bodies to those listed in FOI(S)A may be covered by EIR;
- A 40 day response time can apply when cases are complex and voluminous;
- Fees charging may work differently;
- The exemptions work in slightly different ways (e.g. in EIR there are no absolute exemptions.

Where the two overlap

- Both regimes are fully retrospective;

- An authority has 20 working days to respond to requests (in all but the most complex requests for environmental information);
- The Scottish Information Commissioner will enforce the regime and handle appeals;
- Authorities have a common duty to provide advice and assistance;
- Authorities are required to proactively publish as much information as possible.

57. Authorities should familiarise themselves with these 3 distinct pieces of legislation - FOI, DPA and EIRs as requests for information covered by each of these must be dealt with in slightly different ways.

Information intended for future publication

58. An authority may withhold requested information if it is intended for publication within 12 weeks of the date of the request. However, because of unforeseen circumstances, the authority may not be able to adhere to that date. Once an authority becomes aware of a delay in the publication date, it should contact the applicant and explain both the reason for the delay and the revised date of publication (if known). Significant delay in publication would be likely to remove the ability to withhold information because it is intended for it to be published. If the applicant is not satisfied and requests a review of the authority's decision not to supply the information because of its future publication then the authority should consider complying with the request for review even if this has been made outside the statutory period of 40 working days specified in section 20 of the Act. Authorities have discretion to do this under section 20(6) of the Act.

27(1)

20

20(6)

Fees for the provision of information

59. The Act does not require charges to be made for the provision of information. However, public authorities have discretion to charge a fee in accordance with Fees Regulations made under the Act.

9,12,13

60. The Fees Regulations do not apply:

- to material made available under a publication scheme;

23

- to information which is reasonably accessible to the applicant by other means;

25

- where provision is made by or under any other piece of legislation as to the fee that may be charged by the public authority.

9(7)

Public authorities should ensure that, in cases falling outside those covered by the Fees Regulation, any charges they make are in accordance with any other legislation and are within the terms of any relevant guidance issued by the Scottish Executive. Guidance on charging for the provision of information is attached at Annex 3.

13(4)

61. Where the applicant indicates that he or she is not prepared to pay the fees notified in any fees notice issued, the authority should consider whether there is any information that may be of interest to the applicant which is available free of charge.

Monitoring

62 . Authorities should adopt appropriate systems to monitor their performance under the new arrangements. It will be for each public authority to determine what information can most effectively be recorded under its administrative procedures, while satisfying itself that it is complying with the law (and able to demonstrate this). Once the general right of access comes into force, all written or recordable requests for information can be classed as a FOI request, but monitoring all requests may be problematic for authorities. However, monitoring activities should generally include collecting:

- the numbers of requests under section 1(1) which have been refused and the reasons for the refusal;
- the numbers of fees which have been charged under sections 9, 12 and 13;
- the numbers of reviews which have been carried out under section 20 and 21 and the outcome of such reviews;
- instances when the time limit for reply has been exceeded and reasons.

This list is not exhaustive and, with experience, authorities may, in discussion with the Commissioner, agree upon a standard set of statistics which more aptly reflect their compliance.

PART III

Requirement for Review

63. Any applicant who is dissatisfied with the way that an authority has dealt with a request for information is entitled to require the authority to review its decision. Where an authority refuses to disclose information in whole or in part, they are required to notify the applicant both of their right to request a review and of their right to appeal to the Commissioner. **20(1)** **19**

64. A "requirement for review" is quite distinct from any other procedure an authority may have in place for dealing with general complaints about other service areas. A request for a review must be made no later than 40 working days following the expiry of the period for responding to a request for information (although, under section 20(6) of the Act, authorities have a discretion to comply with a request for review after this period has elapsed if it considers it appropriate to do so) or from the date on which the authority complied with the request, sent a fees or refusal notice or a notice that the information is not held. Where an applicant has not been made aware of his or her rights to a review but nevertheless questions, in writing, the decision of an authority, the authority should treat the query as a formal request for review.

65. It is important that authorities put in place appropriate and accessible procedures for handling reviews. The review procedure should be fair and impartial and it should enable different decisions to be taken if appropriate. The review process should also fully address the access needs of disabled applicants. (See also Annex 2). The procedure should be straightforward and capable of producing a determination of the review promptly and in any event, within 20 working days of receipt of the request for the review.

66. Where the requirement for review concerns a request for information under the general right of access, the review should generally be handled by staff who were not involved in the original decision. While this may not always be possible, it is important that the review procedure enables the matter to be considered afresh.

67. An authority is not obliged to comply with a request for a review if the request is considered vexatious or the original request for information was vexatious or repeated - i.e. identical or substantially similar- but must notify the applicant to that effect. The notice must also contain particulars about the rights of application to the Commissioner and of appeal. **21(8)** **47(1),56**

68. Where the outcome of a review is that information, previously withheld, should be disclosed then the information should be provided as soon as possible but no later than the 20 working day period permitted to consider the requirement for review.

69. Where the outcome is that procedures have not been properly followed by the authority's staff, the authority should apologise to the applicant and take all necessary steps to prevent a similar occurrence in the future.

70. Any notice confirming the authority's original decision should include the necessary particulars explaining the applicant's right to appeal the review decision, within certain time limits. **47(1)**

Refusal of request

71. In issuing a refusal notice, the authority should explain which exemption in Part 2 of the Act applies and, if otherwise not apparent, why it applies. (However, under section 18 the authority can, in certain cases and where this is in the public interest, issue a refusal notice which does not state whether or not the requested information exists). The Act also requires authorities, when withholding information other than under an "absolute exemption", to state the reason for claiming that the public interest in maintaining the exemption outweighs the public interest in disclosure. (subject to the proviso at section 16(3)). (See also paragraph 63) **18** **16(2)** **16 (3)**

Substantial Prejudice

72. In determining whether the disclosure of information would result in "substantial prejudice" to those interests referred to in Part 2 of the Act, authorities should consider disclosing the information unless the prejudice caused would be real, actual and of significant substance.

Public Interest

73. Where the authority considers that substantial prejudice would result from disclosure of the requested information, it will still be required to consider the **public interest** in making the material available**.** The "public interest" has been described as something that is of serious concern or benefit to the public not merely of individual interest. It has also been stated that public interest does not mean "of interest to the public" but "in the interest of the public". The term is not defined in the Act and may change over time and according to the circumstances of each situation. Because of this, authorities will need to make a judgement based on the circumstances of each case and in the light of any emerging guidance or best practice. **2(1)(b)**

74. It is difficult to set out a definitive list; however, amongst the factors which may inform a decision about the public interest are:-

- the general public interest that information is accessible i.e. whether disclosure would enhance scrutiny of decision-making processes and thereby improve accountability and participation;
- whether disclosure would contribute to the administration of justice and enforcement of the law including the prevention or detection of crime or the apprehension or prosecution of offenders;
- whether disclosure would affect the economic interests of the whole or part of the United Kingdom;
- whether disclosure would contribute to ensuring effective oversight of expenditure of public funds and that the public obtain value for money;

- whether disclosure keeps the public adequately informed of any danger to public health or safety, or to the environment;
- whether disclosure would impact adversely on safeguarding national security or international relations; and
- whether disclosure would contribute to ensuring that any public authority with regulatory responsibilities is adequately discharging its functions;
- whether disclosure would ensure fairness in relation to applications or complaints, reveal malpractice or enable the correction of misleading claims;
- whether disclosure would contribute to a debate on a matter of public interest;
- whether disclosure would prejudice the protection of an individual's right to privacy.

75. In deciding whether a disclosure is in the public interest, authorities should not take into account:

- possible embarrassment of government or other public authority officials;
- the seniority of persons involved in the subject matter;
- the risk of the applicant misinterpreting the information.
- possible loss of confidence in government or other public authority;

Enforcement of the Code

76. The Commissioner will promote observance of the Code. If it appears to him that an authority is failing to take account of the guidance in this Code, he may issue a **"practice recommendation"** specifying the steps that the authority should, in his opinion, take to promote conformity.

77. The recommendation will set out in writing the particular provisions of the Code with which the authority is failing to comply. A practice recommendation is simply that - a recommendation, designed to help the authority improve its procedures under the legislation, and consequently cannot be directly enforced by the Commissioner. However, a failure to comply with a practice recommendation may lead to a failure to comply with the Act and may also be the subject of specific comment in the Commissioner's report to Parliament.

78. If the Commissioner requires any information to determine whether the authority is complying with the guidance in this Code (or with the provisions of the Act), he may issue an "**information notice**" which requires an authority to provide the necessary information to the Commissioner within a stipulated time.

79. The notice will explain why the Commissioner requires the information in order to determine whether the authority is conforming with the Code - (or the Act). The notice will also give details of the rights of appeal to the Court of Session. If a public authority fails to comply with an information notice the Commissioner may certify in writing to the Court that the public authority has failed to comply with the notice. The Court may then inquire into the matter and deal with the authority as if it were in contempt of court.

Availability

The Scottish Ministers will review and may revise this Code of Practice from time to time to ensure that it remains fit for purpose. Copies of the Code may be obtained from

Freedom of Information Unit
G-A North
Victoria Quay
EDINBURGH
EH6 6QQ

Telephone: 0131 244 5061

Freedom of Information Website:

http://www.scotland.gov.uk/Topics/Government/FOI

E-mail: foi@scotland.gsi.gov.uk

This Code of Practice can be made available in an alternative format by contacting FOI Unit at any of the addresses noted above.

ANNEX 1

OTHER RELEVANT ACTS AND GUIDANCE DOCUMENTS

Scottish Information Commissioner

www.itspublicknowledge.info

Information Commissioner

www.dataprotection.gov.uk

Disability Discrimination Act 1995

www.drc-gb.org

Race Relations Act 1976
Race Relations (Amendment) Act 2000

Race Relations Act 1976 (Statutory Duties)(Scotland) Order 2000

www.cre.gov.uk

Human Rights Act 1998

www.humanrights.gov.uk

The Data Protection Act 1998

Environmental Information Regulations 2004

Local Government (Access to Information) Act 1985

Access to Medical Reports Act 1988

Education (Disability Strategies and Pupils' Records) (Scotland) Act 2002

Public Finance and Accountability Act 2000

Ethical Standards in Public Life Act 2000

(Available from www.hmso.gov.uk)

ANNEX 2

THE DISABILITY DISCRIMINATION ACT 1995

1. The Disability Discrimination Act 1995 is aimed at stopping discrimination against disabled people. Part 1 of the Act gives a definition of disability, Part II deals with discrimination in employment, Part III with discrimination in the provision of goods and services and Part IV with discrimination in education.

2. Goods and services are not defined within the legislation, but the Act covers all providers who make their goods or services available to the public or sections of the public. All local authorities will therefore be covered, as are health providers, cinemas, restaurants, lawyers etc.

3. When the Act first came into force in December 1996, discrimination in this area was defined as treating a disabled person less favourably for a reason relating to their disability, without justification. This can be by refusing a service, giving a lower standard of service, or providing the service on worse terms.

4. In October 1999, pro-active duties on goods and service providers were introduced. A service provider has a duty to change policies, practices and procedures that make it impossible or unreasonably difficult for a disabled person to use a service. It doesn't matter whether the same policy or practise is applied to non-disabled people as well; the test is how it affects the disabled person. An example would be a sports ground who insist that disabled people bring someone with them to games, or a mobile telephone company who provide free talk minutes but refuse to allow a deaf user equivalent free text minutes.

5. At the same time, service providers were obliged to provide auxiliary aids and services where it is reasonable to do so. This could be a text phone to allow deaf callers to contact the service, a loop system, or providing information on tape or in large print. What is reasonable will depend on, amongst other things, the cost of the aid or service, the resources of the service provider and the availability of the aid or service.

6. The opportunity for a service provider to claim justification is limited. He or she must believe one of the following conditions exist, and must hold that belief reasonably. The conditions are:-

- there is a danger to the health and safety of the disabled person or to others;
- the disabled person is incapable of entering into an agreement or giving consent;
- the different treatment is necessary to provide the service to others;
- the different terms of provision reflect the greater cost of providing the service beyond the service providers duty to make reasonable adjustments;

- the service provider would have to fundamentally alter the nature of their service to provide it to a disabled person.

7. In October 2004, the remaining duty under Part III will come into force. Where a physical feature makes it impossible or unreasonably difficult for a disabled person to access a service, a service provider must: remove the feature or alter it, provide a reasonable means of avoiding it or make their service available in an alternative way.

8. Further information on the Act is available from the Disability Rights Commission. Contact details are:

Website www.drc-gb.org

Helpline 08457 622 633

Textphone 08457 622 644

E-mail enquiry@drc-gb.org

9. RNIB Scotland also provides practical advice and support to public authorities in fulfilling their responsibilities under the DDA.
Contact details are:

Website www.rnib.org.uk

Helpline 0845 766 9999

E-mail rnibscotland@rnib.org.uk

ANNEX 3

FREEDOM OF INFORMATION (SCOTLAND) ACT 2002

GUIDANCE TO SCOTTISH PUBLIC AUTHORITIES ON CHARGING FEES FOR PROVIDING INFORMATION.

The fees regulations apply only to formal requests for information under section 1(1) of the Act. They do not apply to any charges for documents available through publication schemes, such as priced publications.

Background

1. Sections 9, 12 and 13 of the Freedom of Information (Scotland) Act 2002 ("the Act") allow the Scottish Ministers to make regulations enabling Scottish public authorities to charge for providing information. Charging under FOI is not compulsory. Much of the information which authorities will make available will fall below the level for incurring a fee and, in practice, will be made available free of charge. While the fees regime is not intended to permit full cost recovery, authorities should bear in mind that many applicants may be on low incomes. In line with their general responsibilities to provide advice and assistance[1], authorities should consider how best to provide the information in the most cost effective way.

2. The regulations set out the legal framework that Scottish public authorities must comply with when they are charging for information under the Act. This guidance sets out how authorities should interpret the regulations and should be carefully followed by authorities when charges are to be applied.

The Regulations and what they do.

3. There are **two Statutory Instruments** covering the fees regime:-

(a) ***The Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 (the sections 9 and 12 regulations) ; and***

(b) The Freedom of Information (Fees for disclosure under Section 13) (Scotland) Regulations 2004 (the section 13 regulations).

(a) The first and more important instrument covers the fees structure where a Scottish public authority receives a request for information under the FOI Act and is obliged to comply with it.[2] It sets out the maximum concessionary rates that an authority can charge those who

[1] The Freedom of Information (Scotland) Act 2002, section 15

[2] This instrument is subject to affirmative procedure in the Scottish Parliament. That means that a draft must be subject to debate first in the Parliament and it must receive an affirmative resolution of the Parliament before the instrument can be brought into force.

request information, if indeed the authority chooses to charge at all. However, a cap is placed on costs in that the authority is relieved of the obligation to comply at all with the request for information if projected costs are above an amount specified by Scottish Ministers. This is referred to in the regulations as the prescribed amount and is currently £600.

(b) The second instrument covers the fee structure where a Scottish public authority receives a request for information under the FOI Act but is not obliged to comply with it because the costs of providing the information are projected to exceed £600 (the prescribed amount).[3] In such a situation the authority may, nevertheless, be willing to comply with the request and the regulations set out the provisions for doing that. If it complies, the authority is again restricted to charging at the concessionary rates for projected costs up to £600 (i.e. what it would have charged had the projected costs not exceeded the cap of £600). For the projected costs above the £600, the authority may recoup all those costs, bearing in mind that staff time remains subject to the maximum rate of £15 per hour.

Concessionary Rates

4. In terms of the charging structure, the authority works out the "projected" costs of complying with the request. If the request is to be complied with, either because the projected costs will be below £600, or because the authority is willing to comply despite the projected costs overrunning the £600 cap, the first £600 of costs are scaled down as regards the figure recoverable from the applicant, as follows.

- the first £100 of costs are provided free of charge. **(regulation 4(2) of the sections 9 and 12 regulations)**
- Where projected costs include the cost of staff time in locating and retrieving the information, the cost of staff time is not to exceed £15 per hour for each member of staff engaged on the task. (**regulation 3(b)).** This is a maximum rather than a standard rate to be applied in every case, particularly where staff costs prove to be lower.
- For projected costs above £100, authorities may make a charge of 10% of those costs up to the prescribed amount (**regulation 4(3)**).
- The prescribed amount is £600. Authorities may charge for provision of information above that limit based on concessionary recovery (as set out above) up to £600 and full recovery of amount by which the projected costs exceed £600 - but are not obliged to do so. (**regulation 4 of the section 13 regulations)**

Projected Costs

5. The reason for having "projected" rather than actual costs as the lynchpin of the charging structure is to provide maximum flexibility for both the person requesting the information and the authority providing it. Via the fees notice the authority offers the applicant a binding quote based on how much it estimates the work will cost. If the applicant does not want to proceed with the request they may decline the quote. By proceeding in this way the authority will avoid abortive work being carried out where applicants subsequently decide they do not wish to proceed with the request for information.

[3] This instrument is subject to the simpler Parliamentary negative procedure in which there is no mandatory prior debate and vote.

6. "Projected" costs have to be a reasonable estimate of the costs likely to be incurred and based only on the estimated actual costs to the public authority. This will include direct outlays like postage and the cost of paper. If the cost to the authority for photocopying material is 10 pence per A4 sheet, it would be unacceptable to include a greater charge for this element in estimating the fee. Charges for storage media on which information may be provided (eg CDs) should not exceed the purchase price of the materials themselves. Projected costs will also include reasonably attributable overheads such as the managerial or supervisory costs (indirect costs) of responding to an FOI request. However, from the applicant's point of view, there is a safeguard built in, insofar as staff time, including for supervisory or management staff, cannot be charged out at more than £15 per hour. Charges for a person's time should not be rounded up to the hour, but expressed as a fraction of an hour if only a fraction is worked.

7. The fee may not be increased if the actual costs of locating and retrieving the information and then supplying it turn out to exceed the level originally estimated. There may be occasions when actual costs fall below the original estimate. In these circumstances, the authority should consider issuing a refund of any overpayment. Authorities will also need to be prepared to justify the level of fee if subsequently required to do so by the applicant or ultimately by the Scottish Information Commissioner. For these reasons, authorities should ensure that their estimated charges are based on reasonable assumptions about the resources likely to be required to comply with a request.

8. The fees notice itself should include advice about the authority's procedure for dealing with complaints about its handling of requests and also about the rights of appeal conferred by sections 20 (1) and 47 (1) of the Act.

Authorities may charge for:

- direct and/or indirect costs incurred in locating, retrieving, and providing the information in accordance with the Act; (**regulation 3(1))**
- giving effect to a preference expressed by the applicant for receiving the information. (Applicants may express such a preference as to the format in which the information is presented to them under section 11 of the Act and authorities should give effect to that so far as it is reasonably practicable to do so.

Authorities may not charge for:

- any costs incurred in determining (a) whether an authority actually holds the information and (b) any costs incurred deliberating about whether or not to provide the information; (**regulation 3(2))**
- any costs likely to be incurred by the authority in fulfilling any duty under or by virtue of s21 of the Disability Discrimination Act 1995 in giving effect to the means by which an applicant wishes to receive the information. **(section 11(5) of the Act)** (See Annex 1 to this Code of Practice)

Example 1

The authority estimates that locating and retrieving the information will take 2 members of staff 4 hours to complete.

Actual cost of staff time:	£8.50 per hour x 4	= £34
	£14.00 per hour x 4	= £56
Photocopying :	50 x A4 sheets at 10p per sheet	= £5
		=£95

Therefore, the information will be provided to the applicant at no charge as the total falls below £100.

Example 2

The authority estimates that locating and retrieving all the information will take the same two members of staff 2 full days to complete.

Actual cost of staff time:	£8.50 per hour x 15	= £127.50
	£14.00 per hour x 15	= £210.00
Cost of converting info into tape for an applicant with sight impairment	£50	= £0
		= **£337.50**

The charge to the applicant will be:	**£337.50 minus £100**	**= £237.50**
	£237.50 x 10%	**= £23.75**

Non-payment of fee

9. Section 9 of the Act provides that if the authority has issued a fees notice to the applicant, it is not obliged to provide the information unless the fee is paid. The fee should be paid within 3 months of the fees notice being issued. Where the fee is not paid within the three month period, authorities will be entitled to treat the request for information as withdrawn, but should write to the applicant confirming that.

Aggregation of Costs

10 **Regulation 6** addresses the aggregation of costs where an authority receives two or more requests from different persons which cover the same subject matter or which significantly overlap.[4] In such cases, where the estimated aggregated costs of complying with

[4] The regulations do not introduce the provisions in the Act to aggregate costs where two or more requests are made by one person (Section 12(2)(a)) or by different persons who appear to be acting in concert or whose requests appear to have been instigated for a purpose other than obtaining the information itself (section 12 (2) (b) of the Act. This approach will be reviewed in due course and if it appears that requests of this nature are presenting difficulties the provision can be included in future revised regulations.

the requests exceed the prescribed limit of £600, the authority is not required to comply with each individual request providing it makes the information available to the public at large.

11. Where, in such cases, the authority elects to make the information widely available to the public rather than responding to the individual requests, the authority is still obliged to act within the statutory time scale. That is, the authority must either respond to the individual requests or publish the information and inform each applicant of where the information can be found, and they must do this within 20 working days of receiving the first request.

12. How this information is made available to the public will be a matter for the authority. One method would be to provide this information electronically via the authority's website and supply each applicant with a link. However, supplying an electronic link will not be appropriate in every case and authorities may have to provide hard copy in instances where applicants do not have access to the internet.

Section 27 Exemption – Information intended for future publication

13. Authorities should note that if their decision to publish information is taken after or in the light of receipt of the first of the two or more requests which they are aggregating, then they must publish the information within 20 days (regulation 6(d)). Such information cannot attract the exemption at section 27 and therefore be published within the longer timescale of 12 weeks. (This is because section 27 requires the information to be already held with a view to imminent publication at the time the request is received (see section 27(1)(b))).

Projected costs which exceed the prescribed amount

14. Although under no obligation to comply with a request for information which would exceed £600, an authority should consider what information could be released free of charge or below the prescribed amount, particularly in circumstances where it is apparent that the applicant has a low income or is in receipt of state benefits. Alternatively, an authority can decide to provide the information anyway and can make a charge for doing so. The fee payable is set out in regulation 4 of the section 13 regulations. The example below sets out how the costs are derived in these circumstances.

Example 3

An authority receives a complex request and estimates that it will take 3 members of staff varying lengths of time to locate and retrieve the information. This will take the estimated cost limit over the upper cost. Where an authority is prepared to supply all the information sought the estimate will be calculated as follows:

Actual cost of staff time:	£8.50 per hour x 20	= £170
	£14.00 per hour x 25	= £350
	£15.00 per hour x 10	= £150
Photocopying	200 x A4 paper @ 10p	= £20
		= **£690**

The cost to the applicant is calculated as follows:

First £100	Free

10% of £500	£50
Costs over £600	£90
The charge to the applicant would be	**£140.**

VAT

15. Authorities should note that VAT should not be added to the estimated costs.