Freedom of Information Act 2000

Preparing for Implementation

Publication Schemes a Practical Guide:
Part I 'Classes'

Contents

1.   Introduction

1.1   This 'practical guide' aims to help public authorities in developing a publication scheme (a 'scheme') as required by section 19 of the Freedom of Information Act 2000 (the 'Act') [1]. The guide attempts to clarify some of the terms used in the Act and through the use of simplified examples and diagrams to show how a scheme works in practice. Whilst adopting a scheme is a legal requirement of the Act, it is important to stress the many benefits to be gained by the public authority. These are highlighted in paragraph 9 of this paper.

1.2   Section 19(1) of the Act states that it is the duty of every public authority to adopt and maintain a publication scheme, to publish information in accordance with its scheme and, from time to time, to review the scheme. **The Information Commissioner (the 'Commissioner') has already published a 'Guidance and Methodology' paper, as well as his 'Approval Documentation'. The Guidance and Methodology concerns compliance with the requirement to adopt a publication scheme and sets out suggested approaches to developing schemes. The Approval Documentation deals with the actual documentation that needs to be submitted to the Commissioner for him to determine whether each scheme meets the requirements of the Act.** These publications are available from the Commissioner's website at: www.informationcommissioner.gov.uk or from the Commissioner's office.

1.3   A publication scheme is essentially a 'guide' to the information a public authority routinely publishes or intends to publish routinely. It will clearly be helpful to the public's understanding of what an authority does and the services it provides to outline within the scheme the types of information it holds. This will also assist the public in

formulating requests for information when the statutory right of access becomes available from January 2005. However, it is important to be clear that schemes are a **commitment** to pro-active disclosure of information.
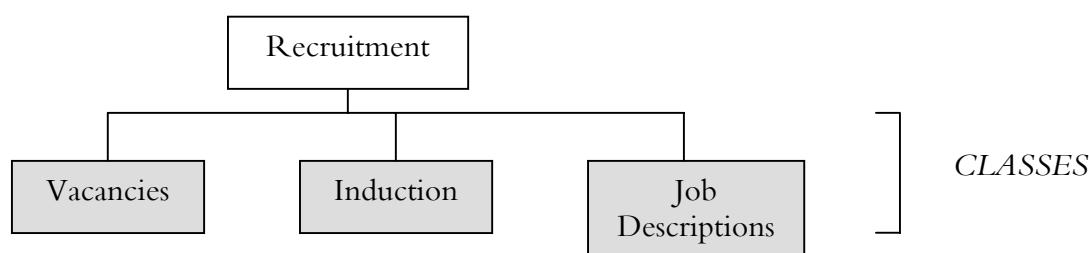
1.4   Information is exempt from the Act if it is reasonably accessible to the applicant by other means (s.21). **One example where information is likely to qualify for this exemption is where it is available through the authority's publication scheme.** Therefore, where someone wishes to exercise their right of access under the Act by making a written request, but the information requested is available via the authority's scheme, the authority will only be required to refer the applicant to the scheme, and will not have to follow its procedure for dealing with requests. Whilst section 16 of the Act requires authorities to provide advice and assistance to those making requests, the day to day administrative burden of responding to individual requests is certain to be reduced if schemes are comprehensive and easy to use.

1.5   One of the requirements of a scheme is that it identifies the 'classes' of information that a public authority will publish. There has been some confusion as to what a 'class' of information is, and where such 'classes' fit within the scheme itself. The Act does not provide guidance on the meaning of a 'class' of information but in section 19(2) states that a scheme must:

(a)   specify classes of information which the public authority publishes or intends to publish,

(b)   specify the manner in which information of each class is, or is intended to be, published, and

(c)   specify whether the material is, or is intended to be, available to the public free of charge or on payment.

1.6   The issues of structure and classes are considered below.

2.   How should a scheme be structured?

2.1   How best to structure a scheme is a matter for each authority. Many public authorities already publish information via a website and it might be logical to assume such material will already be organised in a way that is easily accessible to the public. Whether you choose to follow the structure of your website, reflect your organisational structure by department, or adopt an alternative approach, it is important to ensure that your scheme is easy for the public to follow and to locate the information they seek.

2.2   It is also important for a public authority to note the provisions of section 19(3) of the Act when considering what to include in its scheme. This section provides that 'in adopting or reviewing a publication scheme, a public authority shall have regard to the public interest in allowing public access to information held by the authority, and in the publication of reasons for decisions made by the public authority'.

2.3   The diagram at **Annex I** attempts to show how a public authority's scheme might be broken down and the information it holds organised into classes. For ease of explanation, a function common to all authorities – 'Personnel' – has been used in the example and the scheme has therefore been structured by department.

3. What are 'classes' of information?

3.1   This guide aims to help clarify what a class of information is and some of the considerations a public authority should take into account when constructing or defining classes. In responses to the Commissioner's consultation on schemes (consultation document of July 2001 and summary of responses available on our website and in hard copy from our office) a number of definitions were suggested. These included '…. a group of information having one or more common characteristics'.

3.2   Including a 'class' of information within a scheme commits the public authority to publishing the information that falls within it. It is therefore important that a public authority, and its staff, understand what material is covered and that the coverage is clear to the user. Where it is intended that certain information is **not** included, this must be clear from the class definition (see paragraph 3.6 below). In some cases it might be helpful to the public authority as well as to users, to include a 'definition' with the class heading.

3.3   In Annex I, classes are shown by the shaded boxes, whereas actual documents falling within each class are boxed with a double line (see below for guidance on defining classes appropriately). Please note that it is the classes and not the documents themselves which need to be listed and submitted to the Commissioner for approval of the scheme.

3.4   Extract from Annex I:

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                    ┌──────────────┐
                    │ Recruitment  │
                    └──────┬───────┘
          ┌────────────────┼────────────────┐
    ┌───────────┐    ┌───────────┐    ┌──────────────┐    ┐
    │ Vacancies │    │ Induction │    │     Job      │    │   CLASSES
    └───────────┘    └───────────┘    │ Descriptions │    │
                                      └──────────────┘    ┘
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As outlined, by including a class of information, a public authority is committing itself to publishing all the information covered by that class. For example, if a public authority chose to use 'recruitment' as a class of information then the expectation would be that all information held in connection with the recruitment process would be available through the publication scheme. This would clearly not be appropriate, not least because much of the information that might fall under that heading would be personal data held on application forms, the disclosure of which may breach the Data Protection Act 1998.

3.5   Therefore it might be more helpful to split the heading of **Recruitment** down further into; **Vacancies**, **Induction** and **Job descriptions,** for example.

3.6   For ease of explanation these are the titles of the classes used in the diagram. In reality it might be necessary to refine the definition of these classes still further in order for it to be clear what information would be available in that class (see section 5: **How can the definition of a 'class' be refined?**). It is the heading, plus any definition necessary to make clear exactly what is covered, that is the 'class' which should be included in the text document submitted to the Commissioner for approval (see The Information Commissioner's Approval Documentation for Publication Schemes). It will be that refined definition of the class which the Commissioner will consider, when assessing

whether a public authority is honouring its commitment to publish information in accordance with its scheme.

4.   What about 'exempt' information?

4.1   Exemptions are dealt with in Part II of the Act. General guidance on the way the exemptions work will be available on our website, or in hard copy from our office, **later this year.**

4.2   Some authorities have expressed concern that entire classes of information might have to be left out of their schemes because they consider a small proportion of the information covered is, or might potentially be, exempt information and therefore would not be available under the Act. An example is set out below in 4.3.

4.3
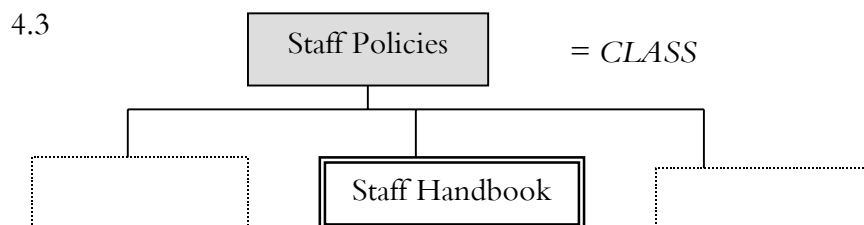
To use an example from Annex I, the class **Staff policies** could be defined as: 'internal policies which collectively establish the procedures that should be followed, and conduct that is expected, by members of staff in the performance of their duties.'

4.4   One of the documents that might fall within this class definition is **Staff Handbook**. Whereas the majority of the handbook might be information that can easily be made public, it may well contain some exempt information. The amount of information that would be exempt may be very limited and so it would be unhelpful to exclude the whole book from the class. The Commissioner intends to adopt an approach that would allow a scheme to accommodate such a situation. Although considering in advance whether an exemption might apply to material covered by their scheme may mean extra work at this stage, there are clearly long-term savings to be gained by the authority, once the right of access becomes available.

4.5   The important point is that where a class includes information from documents that also contain exempt information this is made clear when defining that class. Hence the definition **'staff policies'** given above may be refined as follows:

- 'internal policies which collectively establish the procedures that should be followed and conduct that is expected by members of the authority's staff in the performance of their duties. Some of the material in this class is derived from documents which we consider to contain exempt information. Where this occurs the material will clearly show where information has been withheld and explain what exemption has been applied and why. Typically information may be withheld if its release would compromise the health and safety of staff or national security. (See Annex II– extract from sample document.)

4.6   Authorities should also bear in mind that some classes will involve new material being published as it is produced. For example a class of information defined as 'the minutes from the meeting of a particular working group or committee', is a commitment to

publish existing and future minutes of those meetings. **The production of meeting minutes is another example of where material may well include exempt information, for example, personal data.**

4.7   The Commissioner suggests that minutes could be presented in the following ways:

a) Minutes could be made available with any exempt text blanked out, with details of the exemption the authority considers to apply; or

b) Minutes could be prepared in a way that excludes exempt information in the first place, for example, 'staffing matters were discussed'.

4.8   Authorities must remember, however, that should separate versions of the minutes be held internally, individuals may still exercise their right of access **(which is expected to come into force from January 2005)** and request the unpublished version, or indeed the blanked out text. Clearly, where an exemption is properly applied, the authority would not be required to release the relevant material in response to the request.

5.   How can the definition of a 'class' be refined?

5.1   With reference to Annex I, **Vacancies** could be further defined as follows:

- vacancies – 'a complete list of job vacancies that the authority has recruited for *(could be limited to a specific period of time)* and is currently recruiting for.'

5.2   **Induction** could be defined as follows:

- 'the authority's current induction programme for all new staff *(could be extended to cover a specific period of past programmes)*. Where the induction programme contains exempt information, this is clearly shown in the text of the particular document together with an explanation of the exemption relied on. Typically information may be exempt that relates to the authority's security measures or where training in a particular area is based on past case work which might therefore include confidential information or personal data.'

5.3   **Job descriptions** could be defined as:

- 'a copy of the job descriptions relating to all the different job roles performed by the authority's staff.'

5.4   **It may be that one exemption applies to a number of classes. In this case it may be simpler to refer to the operation of the exemption in the scheme's preamble rather than repeatedly refer to that exemption in numerous class definitions. For example : "It is not the intention to provide access to information relating to living individuals under this publication scheme except where such information can be disclosed without breaching the provision of the Data Protection Act 1998."**

5.5   **When deciding which approach to adopt the main consideration should be which one provides greatest clarity to the users of the scheme.**

6. At what level should 'classes' of information be defined?

6.1   Classes of information may appear at different levels within the scheme structure, as shown in Annex I.

6.2   Looking at **Staff policies** it should be noted that here a class is defined at a higher level in the tree of the public authority's functions than the classes already considered. That is to say that **Staff policies** is a direct subdivision of the heading **Personnel**, whereas **Vacancies**, **Induction** and **Job descriptions** are a subdivision of **Recruitment**, which itself is a subdivision of the heading **Personnel**.

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                   ┌──────────────────┐
                   │  Staff Policies  │        = CLASS
                   └──────────────────┘
              ┌────────────┼──────────────┐
     ┌───────────────┐ ┌──────────────┐ ┌──────────────┐
     │ Use of e-mail │ │ Staff Handbook│ │     etc      │
     └───────────────┘ └──────────────┘ └──────────────┘
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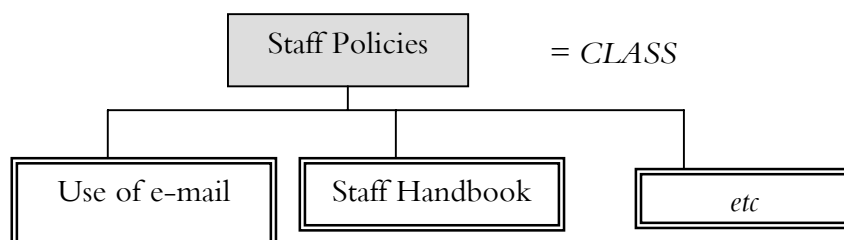
6.3   Indeed it is theoretically possible that further up the tree there is a division that could usefully be used as a class. For example a public authority may wish to make all information held by **Department A** available through its scheme. In such a case **Department A** could be the title of a class.

7. How much information should be included in a class?

7.1   A class will include as much or as little information as it defines. As in the example provided at paragraph 6.3 it may cover the work of an entire department. Alternatively, in the case of the class 'Organisation structure' in Annex I, it may only contain one document, i.e. a chart of the organisation's structure, as shown below:

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                       ┌────────────┐
                       │ Personnel  │
                       └────────────┘
        ┌──────┬──────┬──────┬──────┬──────┬──────────────┐
     ┌────┐ ┌────┐ ┌────┐ ┌────┐ ┌────┐        ┌──────────────┐
     │....│ │....│ │....│ │....│ │....│        │ Organisation │
     └────┘ └────┘ └────┘ └────┘ └────┘        │  Structure   │
                                               └──────────────┘
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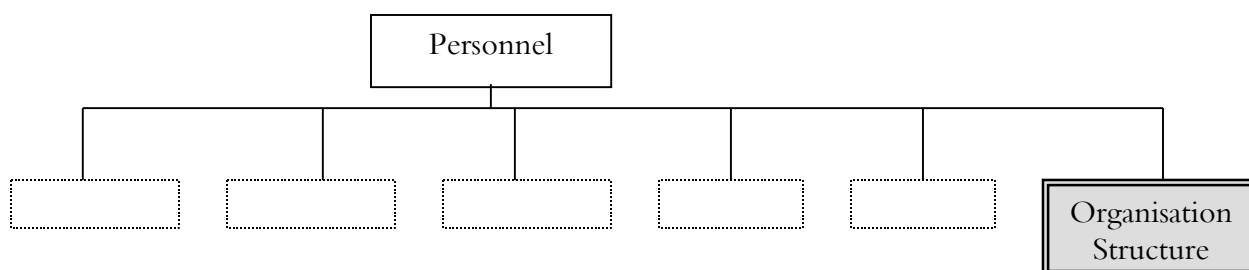
8. How should a text document be submitted to the Commissioner for scheme approval?

8.1   The criteria which the Commissioner will adopt when approving schemes are set out in detail in **The Information Commissioner's Approval Documentation for**

Publication Schemes. The paper explains what documentation must be submitted to the Commissioner in order for a scheme to gain approval.

8.2   In the example in Annex I, the structure of an authority's scheme is set out as a diagram, with the section which deals with 'Personnel' information highlighted. Annex III shows how this particular section of the scheme would be presented in text format, for approval by the Commissioner.

9.   Publication schemes – what is the incentive?

9.1   Adopting a scheme is a legal requirement of the Act, but the experience of those authorities which have already run pilot schemes shows there are many benefits to be gained by the authority. Schemes:

- act as an internal communications tool – a central resource of information
- reduce the administrative burden of dealing with requests
- underline the importance of effective records management – essential if an organisation is to meet its business needs
- provide a valuable housekeeping exercise
- provide an opportunity to disseminate information about the work of the organisation, raising public awareness of its objectives, activities and services
- demonstrate to the public a commitment to openness

9.2   Developing a scheme is also the first step in the process of preparing for dealing with requests under the Act.

10.   Can classes be amended once a publication scheme has been approved?

10.1   **It is important to recognise that there is a difference between a class of information and the information falling within a class. The actual information available in a class may vary over time even though the class definition remains the same. For example where a class is defined as 'the authority's current induction programme', a revised edition of the induction programme will replace the information originally contained in that class. Conversely, the information contained within a class allowing access to job descriptions will expand naturally as the public authority creates new positions. This is the advantage of developing a public scheme around classes of information rather than a static list of documents.**

10.2   **However a public authority may wish to start publishing new information which does not fall within an existing class. Alternatively, a public authority may wish to withdraw access to information which is currently available under an existing class.**

10.3 It is recognised that during the life of a publication scheme circumstances may change which will result in amendments to the scheme becoming necessary. The Commissioner's policy with regard to amendments to a scheme is set out below.

10.4 Where a public authority wishes to add a new class to its approved scheme it needs only to inform the Commissioner of the changes by forwarding the details of the new class (class definition, the manner of publication and whether or not any fee will be charged) to the Commissioner, this will then be appended to the existing scheme.

10.5 If however a public authority wishes to remove information from a scheme by either narrowing the definition of a class, or removing an entire class, then it must submit the details of these changes to the Commissioner together with its justifications for removing that information from the scheme.

11. What other 'practical guides' does the Commissioner plan to publish?

11.1   The following topics have been suggested for future guides to schemes:

- *scheme content (including requirement to consider the public interest in allowing access to information and in publishing reasons for decisions)*
- *publishing schemes*
- *accessibility of schemes and the information they cover*

11.2   Please refer regularly to our website. The 'Freedom of Information' section will be updated as and when new guidance is available.

Endnotes

[1]   The Act applies to public authorities as listed in Schedule 1. There is also a provision in the Act for other authorities to be named later and for organisations to be named as public authorities for relevant parts of their work.

ANNEX I

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                          ┌──────────────────────┐
                          │   PUBLIC AUTHORITY    │
                          └──────────────────────┘
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Department A	Department B	Corporate Services	Department D	Department E

Finance	Personnel	Support Services

Recruitment	Pay & Pensions	Training & Development	Staff Policies	Health & Safety	Organisation Structure

Vacancies	Induction	Job Descriptions		Use of e-mail	Staff Handbook	etc

ANNEX II

Extract from sample 'document' ('Staff Handbook'), illustrating use of exemption

Section 6:

Section 7: Security procedures – in event of terrorist threat

'This public authority' considers the information contained in this section is exempt information by virtue of section 24 of the Freedom of Information Act, in that it relates to security procedures operated by the authority and has therefore been removed from the text.

Section 8:

ANNEX III

Extract from sample 'text document' to be submitted to IC for approval of scheme:

'Personnel' Section of Scheme

Classes, including definitions where appropriate	Information in this class is available in the following formats:	£ indicates that this class includes chargeable material
Staff Policies: 'internal policies which collectively establish the procedures that should be followed and conduct that is expected by members of the authority's staff in the performance of their duties. Some of the material in this class is derived from documents which we consider to contain exempt information. Where this occurs the material will clearly show where information has been withheld and explain what exemption has been applied and why. Typically information may be withheld if its release would compromise the health and safety of staff or national security. *(See Annex II– extract from sample document)*	Hard copy by contacting: (eg: tel no/address); website	
Organisation structure: chart	Hard copy by contacting: (eg: tel no/address); website	
Vacancies: a complete list of job vacancies that the authority is currently recruiting for	Hard copy by contacting: (eg: tel no/address); website	
Induction: the authority's current induction programme for all new staff. Where the induction programme contains exempt information, this is clearly shown in the text of the particular document together with an explanation of the exemption relied on. Typically information may be exempt that relates to the authority's security measures or where training in a particular area is based on past case work which might therefore include confidential information or personal data.	Available only in hard copy by contacting: (eg: tel no/address)	