



Freedom of any information?

Any information held in a public authority's records is potentially disclosable by request under the Freedom of Information Act 2000 (the "Act"), whether it relates to the public authority itself, another public authority or a private company. Two recent cases have called into question exactly what constitutes "information" for the purposes of the Act and the potential reasons for refusing a request.

Right to have information communicated

A person requesting information has the right "to have that information communicated to him". The Independent Parliamentary Standards Authority (IPSA – the independent body set up to oversee the claims process for official expenditure by Members of Parliament) was found to have breached this right by refusing to provide photocopies of documents requested by a journalist for the purpose of assessing whether certain MPs' claims for expenses were genuine and justified (*IPSA v (1) Information Commissioner (2) Ben Leapman (2015)*).

More than words?

IPSA only provided transcripts of the invoices and communications it held and argued that, in doing so, it had communicated all the information that was required. The visual details of the letterheads, logos and manuscript amendments were not conveyed by the transcript and the journalist claimed that these details amounted to relevant "information" under the Act.

The Court agreed, and IPSA appealed unsuccessfully. The Court of Appeal found that the information requested was not just presentational, it aided the observer in their assessment of the legitimacy of the document. However, the Court did differentiate between aspects such as the paper on which the invoices were printed (which was not deemed "information", but merely a feature of the record) and the layout, logos, image headers, handwriting or manuscript amendments which were in themselves "information".



The important point to note is that a request under the Act should result in a more complete response including, in principle, an image or copy of the actual relevant document, especially where the request is specific about requiring "all of the information" contained in the document. For the purposes of the Act, information can therefore include visual as well as linguistic information.

Vexatious requests

This may open the doors to a new level of information, however, a word of caution that requests can be exempt if they are found to be vexatious. The Courts have recently clarified that a rounded approach should be taken in considering whether a claim is vexatious and the public authority has to exercise its judgment, in good faith, in light of all the relevant information available to it, not just the content of the claim itself (*Dransfield v (1) Information Commissioner (2) Devon County Council: Craven v (1) Information Commissioner (2) Department for Energy & Climate Change (2015)*).

The test for a vexatious request is objective, based on whether the request has no reasonable foundation. However, considerations can include the nature of the individual making the request, whether they have asked similar questions before, have a history of repeated requests, or if the request is made for a collateral purpose. The cost of complying with the request can also be taken into account. It is therefore important to be reasonable in making requests, and to have a sound justification for exactly what information is being requested.

Requests and refusals

A person requesting information must be provided with it, so far as reasonably practicable, in their preferred format. If an authority collates information they must include everything from the original that is "information" and, as the IPSA case

shows, this may go further than the words or figures. However, there are certain exemptions from disclosure on grounds of, for instance, confidentiality or that release would prejudice commercial interests. In addition, a public authority is not obliged to comply with a request, as the Dransfield and Craven case discusses, where the cost would exceed the appropriate limit or where the request is repeated or vexatious.

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