

## **Bridge McFarland - Business News Article**

### **NEW LEGISLATION - Freedom of Information Act 2000 (czh)**

#### **Background**

The Freedom of Information Act 2000 (FOIA) came into force on 1st January 2005. The aim of the legislation is to make the public sector more open and accountable transforming general access to information held by public authorities from “need to know” to “right to know”.

The list of bodies that have been designated as public authorities includes all central government departments and local authorities (including planning authorities) and agencies such as the police, the health service and education establishments.

Information has a wide definition and includes written, electronic, audio and visual information and also plans. The definition extends to information held by third parties on behalf of a public authority and also includes information you may provide to a Public Authority (for example planning applications and tender documents).

#### **Procedure**

A Public Authority must inform any person requesting information under the FOIA (subject to some exemptions) whether the Public Authority holds the information requested and, if so, supply the information itself. A person requesting access to information must do so in writing, including e-mail, with their name and address included and with a description of the information requested. A fee may be charged for dealing with such a request.

When a Public Authority receives a request for access that is clear and correctly formulated they have 20 working days to respond. A Public Authority can refuse a request for the following reasons:

1. an exemption applies (see below);
2. further information is reasonably required by the Public Authority to deal with the request;
3. the request is vexatious (not just difficult to comply with nor because it is unclear why the applicant requires access to the information);
4. the same request by the same applicant has already been dealt with recently;
5. the cost of complying with the request would exceed an appropriate limit (£600 for central government and £450 for other public authorities.)

A Public Authority must provide a notice to the applicant if one of the exemptions in the FOIA applies. This notice must state which of the exemptions is being used to avoid disclosure and why this is the case.

Exemptions applying to Public Authorities

#### **Public Interest Test**

The test requires the Public Authority to consider whether the public interest in disclosing the information (for example health and safety issues) outweighs the public interest in maintaining the exemption.

#### **Absolute Exemptions**

An absolute exemption, if appropriate, means that the information requested need not be disclosed. There is no need for the Public Authority to consider whether the public interest in the disclosure needs to be considered.

#### **Qualified Exemptions**

Qualified exemptions are those where a Public Authority must consider the public interest test before confirming or denying information or disclosure. Only where the public interest in not acknowledging and disclosing the information outweighs the public interest in acknowledging and disclosing should the information not be disclosed.

#### **Commercial Client Exemptions**

The further exemptions that are most likely to be applicable to commercial clients include the ‘commercial interest’ exemption and the ‘confidentiality’ exemption. If disclosure of information would prejudice the commercial interests of your business the ‘commercial interest’ exemption will apply, subject to the ‘public interest test’. If information is confidential, then the ‘confidentiality’ exemption will apply. The threshold for proving that information is confidential is high - it will not be sufficient to

simply mark documents as “confidential”. Caution must therefore be exercised when information is provided to a Public Authority as it may be disclosed to the public or one of your competitors without any prior agreement or notification.

Precautions for business and commercial clients As a private sector business you may wish to consider the following:

1. Ensure that your employees are aware of the implications of the FOIA by putting in place clear internal policies. You should make it clear which individuals are authorised to release information to public authorities.
2. Consider areas where your business may benefit from the FOIA and make relevant requests. Many Public Authorities will be landowners and it remains to be seen the nature and extent of requests that are made in this context. An example may include a request for comparable rental information upon a rent review applied by a lease of commercial premises
3. Consider key areas where your business will be affected by the FOIA and any consequences of disclosing certain key information
4. You should carefully consider and manage the information that is given to a Public Authority. Before disclosing you should consider whether the information is particularly sensitive and whether it would be more beneficial to withhold the information rather than disclose it. Any release of information should be recorded, so that you can monitor to whom the information was given and by whom.
5. When releasing information to a Public Authority you should consider any affected third parties and consult them prior to releasing the information. You should provide only the essential information and ensure that the difference between the non-confidential and confidential parts of any material are clearly highlighted. Always make sure that the Public Authority records a claim of confidentiality

April 2005