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# Office of the Northern Ireland Public Services Ombudsman

# Access to Information

# Policy Statement

May 2017

**ACCESS TO INFORMATION POLICY STATEMENT**

**Introduction**

1. The Office of the Northern Ireland Public Services Ombudsman (‘NIPSO’) is fully committed to compliance with the requirements of all access to information legislation i.e. the Data Protection Act 1998 (DPA), the Freedom of Information Act 2000 (FOIA), and the Environmental Information Regulations 2004 (EIR), collectively known as ‘the Information Acts’. The aim of the Information Acts is to promote a culture of greater openness and accountability within the public bodies subject to their provisions, to facilitate better understanding of how those bodies carry out their functions and make decisions and how public money is spent.
2. In June 2011, the Northern Ireland Ombudsman signed a Memorandum of Understanding (MoU) with the Information Commissioner which outlined an agreed approach to dealing with information rights and requests for access to information in the context of the Ombudsman’s role in investigating complaints of maladministration. The MoU notes that the Ombudsman’s Office will process information requests in line with the requirements of the Information Acts and simultaneously ensure the protection of personal and confidential information held by the Ombudsman while maintaining the integrity of the investigation process. A copy of the MoU is attached at Appendix 1.
This MoU is an agreed set of principles between the Ombudsman and the ICO under the former offices of Assembly Ombudsman and Commissioner for Complaints. The Office of the NIPSO replaced and expanded the functions of the former offices. This MoU will therefore be reviewed to reflect those extended functions. However in the intervening period, the Ombudsman will continue to apply the principles of the existing MoU.
3. This policy does not relate to requests for information in the context of an investigation i.e. ‘business as usual requests’. These will be dealt with by the relevant Director in conjunction with the Legal Officer.

**Policy Statement**

1. The Information Acts give members of the public the right to access information (including personal information) held by the NIPSO, subject to the applicability of exemptions outlined in those Acts. The NIPSO supports a culture of openness and transparency and will ensure compliance with the Information Acts by ensuring that:

	* appropriate policies, procedures and practices are adhered to by her staff,
	* as much information as possible is publicly available through her Publication Scheme,
	* regular information audits are conducted to ensure that all appropriate information is included in the publication scheme and that the personal information held remains secure,
	* all staff are aware of their responsibilities under the Information Acts and the relevant Codes of Practice and that training is an ongoing process,
	* protection of the personal information held by her in accordance with the Data Protection Principles and by disclosing personal information only in accordance with those principles,
	* the Information Commissioner’s and Lord Chancellor’s Codes of Practice are adhered to by all staff when dealing with an information request or when reviewing such a request and
	* staff are aware of any relevant changes in the law and practice in this area.

**Implementation**

1. In the Office, overall responsibility for ensuring compliance with the Information Acts rests with the Deputy Ombudsman assisted by the Legal Officer. They will also ensure:

	* the provision of FOIA, DPA and EIR training for staff within the Office,
	* the development and maintenance of access to information policies, procedures and guidance,
	* information audits are carried out at regular intervals,
	* all reviews of access requests are conducted by a Director who does not have line management responsibility for the Legal Officer and
	* staff are informed of all relevant changes in law and practice in this area.

**Staff Responsibilities**

1. All members of staff have responsibilities under the Information Acts, and in particular the DPA. It is important that they familiarise themselves with this policy and the legislation. These responsibilities include:

	* identifying information requests quickly and ensuring they are passed to the Legal Officer promptly and
	* assisting the Legal Officer in the collation of information relevant to the request.
2. The Legal Officer is responsible for:

	* responding to all requests for information under the FOIA promptly and within 20 working days,
	* responding to all requests for information under the DPA promptly and within 40 calendar days,
	* disclosing information, where possible, and only withholding certain information in accordance with the exemptions laid down in the relevant Act,
	* advising and assisting members of the public in formulating or expressing requests for information,
	* working with any partners and contractors to ensure that the Office can meet its legislative obligations, including the disclosure of any information they hold on behalf of the Office,
	* consulting with third parties before disclosing information that could affect their rights and interests (however, in accordance with the NIPSO legislation, the final decision on disclosure will rest with the NIPSO),
	* recording all information requests and responses,
	* updating and maintaining the Publication Scheme as required,
	* adhering to the NIPSO’s Records Management Policy and
	* adhering to the Lord Chancellor’s and the Information Commissioner’s Office’s (ICO) Codes of Practice.
3. If the requestor has submitted a Freedom of Information request or Subject Access request and is not content with either the response they receive or the way in which their request has been handled, they can request an internal review. Internal reviews are carried out by one of the Directors.

**Publication Scheme**

1. To comply with section 19 of the FOIA, the Office has a Publication Scheme in place which sets out:

	* the classes of information available,
	* whether the information is available free of charge or if a payment is required and
	* guidance on how information can be obtained.
2. The aim of the scheme is to make information routinely available to the public. It can be viewed on the Office website[[1]](#footnote-1).
3. The Deputy Ombudsman shall ensure that the Publication Scheme is reviewed annually and maintained regularly to ensure adherence to the law and good practice. Responsibility for annual review and maintenance rests with the Legal Officer.

**Requests for Information**

1. The Information Acts give individuals requesting information two rights:

	* the right to be informed whether the Office holds certain information and, if so,
	* the right to have that information communicated to them.
2. A request for information, which is not available through the Office Publication Scheme, must be made in writing – this includes by email. Requests for planning information will be dealt with under the EIR. Requests can be met in a variety of ways such as providing a copy of the original document either electronically or in hard copy, providing a summary of the information or by arranging for the applicant to visit the Office to read the documents. Where possible, the information will be provided in the format requested by the applicant.

**Managing Requests for Information**

1. In relation to requests for information under the FOIA and the EIR, the principles outlined in the attached MoU must be followed and the legislation requires the NIPSO to respond to any written request for information promptly and within 20 working days. However, this timescale can be extended to give full consideration to the public interest test when considering a request for information that may engage a qualified exemption. It is important that all information held be disclosed subject to exemption promptly. However, where it is anticipated that the 20 working day time limit may not be met, the applicant will be advised of the reason for the delay and the anticipated reply date.
2. When an individual seeks access to their personal information, (known as a Subject Access request), the NIPSO must follow the principles outlined in the attached MoU and provide a response within 40 calendar days of receipt. However, where it is anticipated that the 40 calendar day time limit may not be met, the applicant will be advised of the reason for the delay and the anticipated reply date.
3. It is important to adhere to these time limits as failure to do so may result in enforcement action by the Information Commissioner.

**Access to Deceased Persons Records**

1. Where a member of a deceased person’s family seeks access to information about that person the request will dealt with under FOIA. Staff should be aware that members of a deceased person’s family may seek access to health records from the relevant health body under the Access to Health Records Order (Northern Ireland) 1993 and this information is subject to obligations of confidence and article 8 of European Convention of Human Rights. All requests for such information will be dealt with in the first instance by the Legal Officer.

**Appeals and Complaints**

1. Complaints about how the NIPSO has handled any request for information under this policy should, in the first instance, be addressed to:

The Legal Officer
Northern Ireland Public Services Ombudsman
Progressive House
33 Wellington Place
BELFAST
BT1 6HN

Tel: 028 9023 3821

1. An internal review of how a request for information was dealt with under FOIA, DPA or EIR will be carried out within 20 working days. This review will be conducted by a Director who is not the line manager of the Legal Officer.
2. If the applicant is not content with the outcome of the internal review or how a subject access request was handled, they may complain to:

The Information Commissioner
Wycliffe House
Water Lane
Wilmslow
CHESHIRE
SK9 5AF

**Policy Awareness**

1. A copy of this policy statement will be given to all new members of staff and interested third parties. Existing staff and relevant third parties will be advised of the policy which will be posted on the NIPSO’s website and will be available through the publication scheme, as will any subsequent revisions. All staff and relevant third parties must be familiar with, and comply with, the policy at all times.

**Further Information**

1. Further information is available from:

	* the Information Commissioner’s Office website – [www.ico.gov.uk](http://www.ico.gov.uk);
	* the Ministry of Justice website – [www.justice.gov.uk](http://www.justice.gov.uk); and
	* the Public Records Office for Northern Ireland

**Review**

1. This policy will be reviewed in April 2018 in preparation for the new General Data Protection Regulation (GDPR) which comes into force in May 2018.

**Appendix 1**

**Memorandum of Understanding with the Information Commissioner’s Office**

**\*\*This MoU is an agreed set of principles between the Ombudsman and the ICO under the former offices of Assembly Ombudsman and Commissioner for Complaints. The Office of the Northern Ireland Public Services Ombudsman replaced and expanded the functions of the former offices. This MoU will therefore be reviewed to reflect those extended functions. However in the intervening period, the Ombudsman will continue to apply the principles of the existing MoU.\*\***

**Dealing with Information Rights**

**An agreed set of principles between the Office of the Assembly Ombudsman for Northern Ireland and the Northern Ireland Commissioner for Complaints and the Information Commissioner’s Office.**

**Background**

Every citizen has a right to request public information under the Freedom of Information Act 2000 (FOIA)or the Environmental Information Regulations 2004 (EIR) , and request access to their own personal data, by way of a subject access request, under the Data Protection Act 1998 (DPA) .

These are important rights. The right of access to public information in appropriate circumstances is key to making public bodies transparent and accountable. The subject access right is a practical expression of the fundamental right of an individual to respect for their private life. It is the Information Commissioner’s responsibility to promote and uphold these rights.

These individual rights can, however, be constrained in so far as that is necessary to protect the rights and freedoms of others or on other important public interest grounds. FOIA and DPA therefore provide for the withholding of information where there is a properly applied legislative mechanism for doing so.

The Northern Ireland Ombudsman is the popular name for the statutory offices of the Assembly Ombudsman for Northern Ireland and the Northern Ireland Commissioner for Complaints (‘the Ombudsman’). The Ombudsman welcomes the rights of access set out in the Freedom of Information Act 2000, Data Protection Act 1998 and Environmental Information Regulations 2004. At the same time, by the Ombudsman’s governing legislation, investigations must be conducted in private and there are restrictions imposed on the disclosure of information obtained during or for the purposes of an investigation. These restrictions were imposed to ensure that the Ombudsman is able to carry out his statutory function efficiently and act as a necessary counterbalance to the wide powers of the Ombudsman to obtain information.

The Information Commissioner and the Ombudsman recognise the complementarities in the pursuit of their complaints handling functions. They are mindful of their experience of the powers to share information under section 76[[2]](#footnote-2), and schedule 7 of the FOIA[[3]](#footnote-3), by which they can share and receive information with one another. This provision allows sharing of information between the two organisations where it appears that the information relates to matters where the Information Commissioner or the Ombudsmen have jurisdiction to enforce. The Information Commissioner and the Ombudsman consider that this experience as enshrined in statute supports mutual co-operation between each other whilst the clarity afforded by the wording in the statute respects the unique responsibilities and particularities of each. The experience of these interactions can be complex and this paper is not a comprehensive set of technical instructions but instead gives some context and agreed approaches to handling information requests.

This set of general principles has been drawn up to reflect the relative jurisdictions of the Ombudsman and the Information Commissioner’s Office (ICO), and the interaction between the relevant legislation that comes into play when dealing with information rights¹. These interactions can be complex and this paper is not a comprehensive set of technical instructions but instead gives some context and agreed approaches to handling information requests.

**The legislative context**

Article 12 (3) of the Commissioner for Complaints (NI) Order 1996 and Article 13 (3) of the Ombudsman (NI) Order 1996 both provide that the Ombudsman’s investigations shall be conducted in private. Article 21 of the Commissioner for Complaints (NI) Order and Article 19 of the Ombudsman (NI) Order 1996 state that the information obtained in the course of or for the purposes of those investigations can only be disclosed in the very specific circumstances set out in those articles

Members of the public can request information from public authorities under FOIA. Where there is an FOI request relating to an Ombudsman’s investigation then consideration has to be given to the operation of section 44 of FOIA. Section 44 provides that information is exempt information if any other enactment prohibits its disclosure.

Requests for personal data, as opposed to public information, can be made under the DPA. The application of the DPA and its interaction with both Article 21 of the Commissioner for Complaints (NI) Order 1996 and Article 19 of the Ombudsman (NI) Order 1996 is different to that of the FOIA. Section 27 of the DPA overrides the statutory bar in the Commissioner for Complaints (NI) Order 1996 and the Ombudsman (NI) Order 1996. This means that personal data can only be withheld where a relevant Data Protection Act exemption applies.

This does not mean, however, that all personal data has to be released under the provisions of the DPA as a matter of course. Section 31(4) of the DPA allows the Ombudsman to deny access to personal data to the extent that providing access to that personal data would be likely to prejudice the proper discharge of his statutory functions.

The Ombudsman has explained that if information from a complaint file is released under the DPA (when Ombudsman’s legislation makes clear that the Ombudsman’s investigations are undertaken in private and information should only be disclosed in very limited circumstances), the bodies investigated are likely to be less inclined to give all the information the Ombudsman needs in order to carry out his statutory functions effectively.

Parliament accepted that there was a clear public interest behind the statutory bar – which led directly to the passing of section 31(4) of the DPA, and the existence of the statutory bar is a relevant factor in determining whether personal information should be released. In effect, section 31(4) helps the Ombudsman to carry out his functions in a manner that encourages people to provide him with the information he needs in order to investigate the complaints put to him.

However, the existence of the ‘likely to prejudice’ test makes clear that this exemption does not operate as a blanket application covering all personal data in all Ombudsman’s investigations, and the exemption applies only in any case to the extent to which disclosure of the personal information to the data subject would be likely to prejudice the proper discharge of his functions.

The Ombudsman must, therefore, balance its duty to operate openly and transparently with its duty to act within the legislation that governs its work and to protect the privacy of personal and other information given to the Ombudsman in confidence.

**How the Ombudsman will handle information requests**

The Ombudsman will process information requests in line the with requirements of the FOIA, EIR, and DPA while at the same time protecting information which should remain private in line with the legislation that governs the Ombudsman’s work. In order to achieve this balance, the Ombudsman will take a three-step approach and consider all of the legislative requirements when handling information requests. Those three steps are:

* Disclosure under the Commissioner for Complaints (NI) Order 1996 and Ombudsman (NI) Order 1996.
* Disclosure under the FOIA (or EIR).
* Disclosure under the DPA.

The Annexes to these principles set out both how the Ombudsman will handle information requests in line with the relevant legislation and what the ICO will take into account when considering a complainant’s rights and the application of FOIA, EIR or DPA

Signed

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Dr Tom Frawley

Assembly Ombudsman for Northern Ireland and Northern Ireland Commissioner for Complaints

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Christopher Graham

Information Commissioner

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Date

**Annex A**

**Disclosure by the Ombudsman under the Commissioner for Complaints (NI) 1996 and the Ombudsman (NI) Order 1996**

The Ombudsman will consider whether the information requested can be released under his own legislation taking into account the following provisions:

* Article 12 (3) of the Commissioner for Complaints (NI) Order 1996 and Article 13 (3) of the Ombudsman (NI) Order 1996, which both provide that the Ombudsman’s investigations shall be conducted in private.
* Article 21 of the Commissioner for Complaints (NI) Order 1996 and Article 19 of the Ombudsman (NI) Order 1996 prevent information obtained by the Ombudsman or his officers in the course of or for the purposes of an investigation from disclosure, except in very limited circumstances[[4]](#footnote-4). (The most relevant of those circumstances is for the purposes of an investigation and for any report to be made in respect of an investigation.)

Under the provisions of the legislation that governs the Ombudsman’s work, therefore, the information that can be disclosed about her investigations is limited. In practice, this means that information obtained in the course of or for the purposes of an investigation will be released when doing so is for the purposes of that investigation (for example, to make enquiries of the body complained about) or for the investigation report/decision letter. This ensures that a complainant sees the information (both personal and non-personal) which is material to the decision to enable the complainant to make representations about findings and recommendations (if any).This information may well go beyond the information that a requester would be entitled to under the FOIA, DPA and EIR and may include, for example, information subject to legal privilege. Any information which has been obtained but which is not material to the Ombudsman investigation, report/decision letter will not be disclosed to the complainant.

**Annex B**

**Disclosure by the Ombudsman under the Freedom of Information Act 2000 or Environmental Information Regulations 2004**

The Ombudsman will also consider whether the information requested can be released under the Freedom of Information Act 2000 (FOIA) (or Environmental Information Regulations 2004 - EIR).

Section 44(1) (a) of FOIA exempts information from release if its disclosure is prohibited under any other enactment. Therefore, any information obtained by the Ombudsman for the purposes of or during the course of an investigation, and which falls, therefore, within the statutory bar at Article 21 of the Commissioner for Complaints (NI) Order 1996 and Article 19 of the Ombudsman (NI) Order 1996, is exempt from disclosure under FOIA. This exemption is absolute, that is, it cannot be overridden whatever the public interest may be in any case in releasing the material concerned.

In terms of considering an information request under the EIR, the Ombudsman will consider each case carefully taking into account any relevant exceptions (most notably section 12(4) (e) and section 12(5) (d)).

**Information Commissioners’ considerations under FOIA and EIR**

If an individual exercises their rights to approach the Information Commissioner then the Information Commissioner will consider the complaint. Where information has not been released under the FOIA an appropriate refusal notice will have been issued and the Ombudsman will be prepared to explain its position to the ICO with that in mind.

The Information Commissioner will consider the refusal reasons and take into account the application of section 44 of FOIA where appropriate.

Information obtained by the Ombudsman for the purposes of or during the course of an investigation is caught by the statutory bar and cannot be disclosed for purposes other than that set out in the legislation.

Information held by a public authority which emanates from the Ombudsman (that is, information that has been obtained by the Ombudsman for the purposes of or during the course of an investigation) is again caught by that Ombudsman’s statutory bar and cannot be disclosed.

Information created by a public authority for the purposes of an investigation by the Ombudsman is also caught by the Ombudsman’s statutory bar.

Information which is held by a public authority for the purposes of its own functions and is not caught by the provisions above, but which has been shared with the Ombudsman during the course of or for the purposes of an investigation, does not fall within the statutory bar and should therefore be disclosed or withheld by that public authority under a different provision in the FOIA.

**Disclosure by the Ombudsman under the Data Protection Act 1998 (DPA)**

The Ombudsman will also consider individual rights under the Data Protection Act taking into account any relevant exemption.

It is noted that any information on an Ombudsman investigation file could be personal information, but not all information on an investigation file will necessarily fall into this category.

As set out above, the need to protect the privacy of the investigation and ensure the efficient and effective exercise of his statutory functions, means that the Ombudsman will take decisions on disclosure under the DPA in light of the existence of an intention behind Article 12 of the Commissioner for Complaints (NI) Order 1996 and Article 13 of the Ombudsman (NI) Order 1996, Article 21 of the Commissioner for Complaints (NI) Order 1996 and Article 19 of the Ombudsman (NI) Order 1996, and section 7, section 27(5) and section 31(4) of the DPA.

This does not mean that the Ombudsman does or will adopt a blanket approach to considering individual requests for information under the Data Protection Act or to applying section 31(4) of the Data Protection Act. Instead the Ombudsman will consider carefully each individual case in order to ascertain whether there is a particular reason, in that case, for overriding the individual’s right of access by maintaining the statutory bar and withholding personal information (not already disclosed for the purposes of his investigation).

If the Ombudsman concludes that section 31(4) of the DPA is applicable, the Ombudsman will need to be specific in identifying/describing the classes/categories of documents that are, in its view, exempt from disclosure and then explain why section 31(4) is applicable to those classes of documents. Careful consideration to identify personal data will need to be carried out to satisfy the requirements of the subject access provisions under both the DPA and the Ombudsman’s legislation, but the Ombudsman does not need to adopt a document by document or line by line explanation to the ICO.

**Information Commissioner’s considerations under the Data Protection Act 1998 (DPA)**

Where an individual seeks an assessment from the ICO following a subject access request, under section 42 of the DPA, the ICO will be considering the application of the Act and adherence to the data protection principles.

It is therefore important to make sure that enough information is provided with regard to the application of section 31 when withholding personal data. It should be remembered that the ICO, when carrying out an assessment, is considering if the principles of the Act are being applied and whether ultimately a breach of the Act is likely or unlikely. This may stop short of actually defining which pieces of personal data (if any) should be released but any explanation, both to the complainant and to the ICO will need to be sufficiently detailed to allow the assessment to be carried out from an informed point of view. As the application of section 31(4) of the DPA effectively curtails what would otherwise be the rights of individuals under that Act, the ICO needs to be satisfied that where this exemption is relied upon, it is supported by reasonable argument rather than by the application of a blanket approach so that all parties are aware of the extent to which disclosure would be likely to prejudice to statutory functions.

1. [www.nipso.org.uk](http://www.nipso.org.uk) [↑](#footnote-ref-1)
2. Section 76 (1) states “the Commissioner may disclose to a person specified in the first column of the Table below any information obtained by, or furnished to the Commissioner under of for the purposes of this Act of the Data Protection Act 1998 if it appears to the Commissioner that the information related to a matter which could be the subject of an investigation by that person under the enactment specified in relation to the enactment specified in relation to that person in the second column of that Table” [↑](#footnote-ref-2)
3. Article 19A of the Assembly Ombudsman (NI) Order 1996 and article 21A of the Commissioner for Complaints (NI) Order 1996 as inserted by section 76(2) of the Freedom of Information Act 2000 and schedule 7 paragraphs 9 and 10 provides for the Assembly Ombudsman for Northern Ireland and the Commissioner for Complaints for Northern Ireland ( the Ombudsman) to disclose to the Information Commissioner any information which appears to the Ombudsman to relate to matters in respect of which the Ombudsman might exercise his enforcement powers of which relates to the commissioning of an offence under the FOIA or DPA. [↑](#footnote-ref-3)
4. This includes in the course of or for the purposes of deciding whether or not to investigate a complaint [↑](#footnote-ref-4)