

UNITED KINGDOM

The [Freedom of Information Act](#) was adopted in November 2000 after nearly 20 years of campaigning.⁴⁴⁵ The Act gives any person a right of access to information held by a broad array of public authorities, which will number over 100,000 when it is in full effect. State authorities are required to respond within 20 working days.

There are three categories of exemptions. Under the absolute exemption, court records, most personal information, information relating to or from the security services, information obtained under confidence, or information protected under another law cannot be disclosed. Under the “qualified class exemption,” information can be withheld if it is determined to be within a broad class of exempted information. This includes information relating to government policy formulation, safeguarding national security, investigations, royal communications, legal privilege, public safety or was received from a foreign government. The third category is a more limited class exemption where the government body must show prejudice to specified interests to withhold information. This includes information relating to defense, international relations, economy, crime prevention, commercial interests, or information that would prejudice the effective conduct of public affairs or inhibit the free and frank provision of advice. A “public-interest test” applies to the last two categories and provides that information can be withheld only when the public interest in maintaining the class or prejudice exemption outweighs the public interest in disclosure. Decisions on the public-interest test can be made beyond the Act’s 20-day limit as long as it is within a time period that is deemed “reasonable in the circumstances.”

Public authorities are also required to develop publication schemes which will provide information about their structures and activities and categories of information that will be automatically released.

The [Information Commissioner](#) oversees and enforces the Act.⁴⁴⁶ The Commissioner has the power to receive complaints and issue decisions. When the Commissioner orders the release of information based on the public interest test, the decision can be overruled by the Minister of the Department with a ministerial certificate. Appeals of the Commissioner’s decisions are made to the Information Tribunal which can also review and quash certificates on limited grounds. Appeals of the Tribunal’s decisions on points of law are made to the High Court of Justice. The Commissioner also reviews and approves publication schemes.

The [Department of Constitutional Affairs](#) (formerly the Lord Chancellor’s Department) is in charge of implementing the act.⁴⁴⁷ It has developed a code of good practice, provides advice and guidance, jointly runs an advisory group with the Information Commissioner, and submits an annual report on implementation to Parliament. In its most recent report, the LCD identified 381 other pieces of legislation that limit the right of access under the FOIA and has committed to repealing or amending 97 of those laws and reviewing a further 201.⁴⁴⁸

⁴⁴⁵ Freedom of Information Act 2000 <http://www.cfoi.org.uk/foiact2000.html>. See Campaign for Freedom of Information, Briefings on FOI. <http://www.cfoi.org.uk/briefingpack.html>

⁴⁴⁶ Homepage: <http://www.informationcommissioner.gov.uk/index.htm>

⁴⁴⁷ DCA FOI Page: <http://www.lcd.gov.uk/foi/foidpunit.htm>

⁴⁴⁸ LCD, Second Report to Parliament on the Review of Legislation Governing the Disclosure of Information November 2002. <http://www.lcd.gov.uk/foi/foidoirpt2.htm>

Implementation of the Act has been slow. The government announced in November 2001 that the provisions of the Act that allow citizens to demand information will not go into force until January 2005. All national and local departments will simultaneously provide access in a “big bang,” rather than in phases. The provisions on publication schemes for central and local government bodies have gone into force and are being phased in for other bodies over the next year.⁴⁴⁹ Most organizations will adopt model schemes developed with the approval of the Commissioner. The Commissioner admitted in his 2002-03 annual report that standards for the initial schemes were set low but will be raised when the schemes are renewed.

The Hutton Inquiry into the death of a government scientist following controversy over charges that the government had misled the public regarding Iraq has provided nearly all documents on its web site.⁴⁵⁰ The documents have generated considerable interest in FOI as they reveal the inner working of the government and would not likely have been released otherwise.

Until the FOIA goes into effect, a non-statutory [“Code of Practice on Access to Government Information”](#) provides some access to government records but has 15 broad exemptions. Dissatisfied applicants can complain, via a Member of Parliament to the Parliamentary Ombudsman if their request is denied.⁴⁵¹ In 2003, the Parliamentary Ombudsman threatened to stop all investigations into the code after the government refused to cooperate in one case and in two other cases, including a question on conflicts of interest by ministers, issued a certificate preventing the Ombudsman from investigating on the grounds that releasing information “would be prejudicial to the safety of the State or otherwise contrary to the public interest.”⁴⁵²

The [Official Secrets Act 1989](#) criminalizes the unauthorized release of government information by officials.⁴⁵³ It has been frequently used against government whistleblowers and the media for printing information relating to the security services. The House of Lords ruled in 2002 that there is no public interest exemption to the act.

Under the [Public Records Act](#),⁴⁵⁴ files that are 30 years old are automatically released by the National Archives.

The UK signed the Aarhus Treaty in June 1998. The Environmental Information Regulations 1992 implement the 1990 EU Directive on access to environmental information.⁴⁵⁵ New

⁴⁴⁹ Freedom of Information Act 2000 (Commencement No. 2) Order 2002, 12th November 2002.
<http://www.hmso.gov.uk/si/si2002/20022812.htm>

⁴⁵⁰ Homepage: <http://www.the-hutton-inquiry.org.uk/>

⁴⁵¹ Code of Practice on Access to Government Information, April 4 1994, revised in January 1997.
<http://www.cfoi.org.uk/coptext.html>

⁴⁵² Parliamentary Commissioner for Administration, 6th Report – Session 2002-2003.
<http://www.parliament.ombudsman.org/pca/document/aoi03nj/index.htm>

⁴⁵³ <http://www.cyber-rights.org/secrecy/>

⁴⁵⁴ Public Records Act, 1958. <http://www.pro.gov.uk/about/act/act.htm>

⁴⁵⁵ The Environmental Information Regulations 1992, Statutory Instrument 1992 No. 3240.
http://www.hmso.gov.uk/si/si1992/Uksi_19923240_en_1.htm

Environmental Information Regulations which implement the Aarhus Treaty and the 2003 EU Directive are awaiting approval.⁴⁵⁶

Individuals can access and correct files that contain personal information about themselves under the [Data Protection Act 1998](#). Appeals can be made to the Information Commission or the courts. The Lord Chancellors Department held a consultation in 2003 on expanding the exemptions in the act after several prominent figures obtained records under the Act which were embarrassing to the government.⁴⁵⁷

[The Freedom of Information \(Scotland\) Act](#) was approved by the Scottish Parliament in May 2002.⁴⁵⁸ The law is considered somewhat stronger than the UK Act. It has a stronger prejudice test for restricting information and Ministers power to veto the [Commissioner](#)'s decisions is more limited. It will also go into effect in January 2005. The Welsh Assembly has adopted a [Code of Practice](#) based on the UK code.⁴⁵⁹ It requires disclosure of information unless it would cause "substantial harm" if it were released. However, the Welsh Assembly has limited legislative powers.

The Local Government (Access to Information) Act 1985 provides a right of access to "background papers" about the policies and practices of local authorities.⁴⁶⁰ It also extended the number of meetings of local authorities and some other public bodies which are open to the public.

UNITED STATES

The [Freedom of Information Act](#) (FOIA) was enacted in 1966 and went into effect in 1967.⁴⁶¹ It has been substantially amended several times, most recently in 1996 by the [Electronic Freedom of Information Act](#).⁴⁶² The law allows any person or organization, regardless of citizenship or country of origin, to ask for records held by federal government agencies. Agencies include executive and military departments, government corporations and other entities which perform government functions except for Congress, the courts or the President's immediate staff at the White House, including the National Security Council. Government agencies must respond in 20 working days.

⁴⁵⁶ DEFRA, Consultation on New Draft Environmental Information Regulations on Public Access to Environmental Information. <http://www.defra.gov.uk/environment/consult/envinfo/>. See also Campaign for Freedom of Information, Response on Draft Regulations, <http://www.cfoi.org.uk/pdf/draftEIRresponse.pdf>

⁴⁵⁷ A Lord Chancellor's Department Consultation Paper Data Protection Act 1998: Subject Access, October 2002. <http://www.lcd.gov.uk/consult/foi/dpsacons.htm>. See Ashcroft memos may spur data law repeal, The Guardian, 5 February 2002; MP challenges secrecy culture, The Guardian, 27 June 2001.

⁴⁵⁸ Freedom of Information (Scotland) Act 2002. <http://www.scotland-legislation.hmso.gov.uk/legislation/scotland/acts2002/20020013.htm>. See the Campaign for Freedom of Information in Scotland site for more information <http://www.cfoi.org.uk/scotland.html>

⁴⁵⁹ National Assembly for Wales, Code of Practice on Public Access to Information, 2001. <http://www.wales.gov.uk/keypubcodespractice/content/codespractice/contents-e.htm>

⁴⁶⁰ See CFI, Access to Local Government Information. <http://www.cfoi.org.uk/localgov.html>

⁴⁶¹ Freedom of Information Act, 5 USC 552, 1966. http://www.epic.org/open_gov/foia/us_foia_act.html

⁴⁶² Electronic Freedom of Information Act Amendments of 1996. http://www.epic.org/open_gov/efoia.html