



**Local Heritage
Engagement
Network**

Toolkit

No. 5

**A guide to the
Freedom of
Information
Act and
accessing
public
information**

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Contents

This document will:

- Describe what the Freedom of Information Act is
- Summarise the key parts of making an FOI request
- Provide information on how this applies to heritage case studies
- Give links to other guides/material.



What is the Freedom of Information (FOI) Act?

The information in this toolkit document has been taken from the website of the [Information Commissioner's Office](#) and [GOV.UK](#). For full and detailed information on the topics below, please refer to these websites when considering using the Freedom of Information Act as part of your advocacy work.

The Freedom of Information Act 2000 provides public access to information held by public authorities. It does this in two ways:

- public authorities are obliged to publish certain information about their activities; and
- members of the public are entitled to request information from public authorities.

The Act covers any recorded information that is held by a public authority in England, Wales and Northern Ireland, and by UK-wide public authorities based in Scotland. Information held by Scottish public authorities is covered by Scotland's own Freedom of Information (Scotland) Act 2002.

Public authorities include government departments, local authorities, the NHS, state schools and police forces. However, the Act does not necessarily cover every organisation that receives public money. For example, it does not cover some charities that receive grants and certain private sector organisations that perform public functions. Recorded information includes printed documents, computer files, letters, emails, photographs, and sound or video recordings.

The Act does not give people access to their own personal data (information about themselves) such as their health records or credit reference file. If a member of the public wants to see information that a public authority holds about them, they should make a subject access request under the Data Protection Act 1998. A full list of the types of organisations covered by the FOI Act can be found here:

<http://www.legislation.gov.uk/ukpga/2000/36/schedule/1>

Anyone can request information – there are no restrictions on your age, nationality or where you live. Your request will be handled under different regulations depending on the kind of information you ask for, e.g. the:

- [Data Protection Act](#) if you ask for information an organisation holds about you
- [Environmental Information Regulations](#) (EIRs) if you ask for environmental information

An organisation could refuse your request [if the information is sensitive or the costs are too high](#). Government departments and other bodies often publish responses to freedom of information requests online.



What to do before you make an FOI request

You can ask for any information you would like, at any time, but it is important to be aware that you may not always be successful in getting the information you need, and sometimes you may get some, but not all the information you ask for. Before you make an FOI request, it may help to consider the following points:

- **Is the information you want already available, for example, on the organisation's website?**

Public organisations are required to make certain information routinely available but this may not always be well sign posted on its website. You can find out what information is available by checking the organisation's publication scheme or guide to information, on their website or by contacting the organisation directly.

- **Is the organisation likely to have the information?**

It may save you time if you check whether the organisation you want to contact is likely to have the information you need. For example, you may not be sure whether the information is held by your district council or the county council. Public authorities must give reasonable advice and assistance to anyone asking for information, so you should feel free to ask for help in making your request. Don't be afraid to phone the council and ask!

- **Is the information you want suitable for general publication?**

The aim of the Freedom of Information Act is to make information available to the general public. You can only obtain information that would be given to anybody who asked for it, or would be suitable for the general public to see.

- Some information, such as records about a dead relative, or documents you need for legal purposes, may not always be available under the Act. However, you may have a right to see the information you want under other legislation. The public authority holding the information you want should advise you.



How do I make an FOI request?

Remember:

- You can ask for any information you think a public organisation may hold. The right only covers recorded information which includes information held on computers, in emails and in printed or handwritten documents as well as images, video and audio recordings.
- You should identify the information you want as clearly and precisely as possible.
- Your request can be in the form of a question, rather than a request for specific documents, but the authority does not have to answer your question if this would mean creating new information or giving an opinion or judgment that is not already recorded.
- Some information may not be given to you because it is exempt, for example because it would unfairly reveal personal details about somebody else.

You will need to contact the organisation in writing to make a FOI request. This can be done by letter, email or fax. If posting a letter, it might be safest to send the request by recorded delivery, and remember keep the Post Office receipt somewhere safe! Keep copies of all the emails and faxes you send too.

What to include:

You should give:

- your real name (not needed if requesting environmental information)
- a contact address to which the organisation can reply – this can be a postal or email address

- a detailed description of the information you want. For example, you may want all the information held on a particular subject, or just a summary

You do not have to:

- mention the Freedom of Information Act or Environmental Information Regulations, although it may help to do so;
- know whether the information is covered by the Freedom of Information Act or the Environmental Information Regulations; or
- say why you want the information.
- you can ask for information in a particular format. For example, paper or electronic copies of information, audio format or large print.



How should I word my request to get the best result?

Most people will exercise their rights responsibly but some individuals and organisations submit requests which may, whether by accident or design, cause a public authority an unjustified or disproportionate level of disruption or irritation. Some requests can cause distress to members of staff in a public authority.

The FOI Act has a built in safeguard to protect public authorities from having to deal with such requests which are called vexatious requests under Section 14 of the Act. There is an equivalent provision for requests which are manifestly unreasonable [Regulation 12(4)(b)].

All requests place some degree of demand on a public authority's resources in terms of costs and staff time, and we expect them to absorb a certain level of disruption and annoyance to meet their underlying commitment to transparency and openness under the FOI Act and EIR. Requests can be challenging in their language but using threatening or abusive language increases the risk that your request will be refused.

It can be difficult for requesters to understand how information is labelled and organised by public authorities - the Act contains a provision that ensures that public authorities must consider whether they should provide you with advice and assistance, within reasonable limits.

Nonetheless, the amount of time and resources that a public authority has to expend in responding to a request should not be out of all proportion to that request's value and purpose.

You need to consider the dos and don'ts below – think about your request objectively - does it trigger any don'ts? If so you may want to rethink your information request otherwise it may be refused as vexatious.



Is my request potentially 'vexatious'?

- If your request does lack any serious or clear purpose or if it is not focused on acquiring information, then the FOI Act and EIR are probably not an appropriate means through which to pursue your concern. You might do better to explore whether there are other more suitable channels through which to take up the issue with the authority.
- You should also bear in mind that the FOI Act includes a safeguard against requests which exceed the cost limits for compliance (Section 12). The equivalent provision in the EIR is once again [Regulation 12(4)(b)] - manifestly unreasonable requests.
- If you are planning to ask for a large volume of information, or make a very general request, you should first consider whether you could narrow or refocus the scope of the request, as this may help you get what you really want and reduce any unnecessary burden or costs on the authority.
- Alternatively, you could try approaching the public authority for advice and assistance to help you reduce the scope of your request and cut down the cost of compliance – they have a duty to consider what advice and assistance they can provide.
- Although you don't have to say why you want the information, if you are happy to do so it might avoid a lot of wasted time and be more likely to get you what you want.



What happens next?

You must get the information within 20 working days. The organisation will tell you when to expect the information if they need more time. The organisation may give you the information you've asked for, tell you it doesn't have the information, or tell you that another authority holds the information or transfer the request on your behalf.

- under the Freedom of Information Act, say that it has the information and offer to provide it if you pay them a fee (but there are rules about what they can charge);
- under the Environmental Information Regulations, make a reasonable charge for providing information in accordance with their published schedule of charges. Note: If the authority allows you to view a public register or other information in person, at a place of their choice, it cannot charge for this;
- refuse to give you the information, and explain why; or,
- under the Freedom of Information Act, say that it needs more time to consider the public interest in disclosing or withholding the information, and tell you when to expect a response. This should not be later than 40 working days after the date of your request. It can only extend the time limit in certain circumstances, and it must explain why it thinks the information may be exempt;
- under the Environmental Information Regulations, say that it needs more time as the information requested is particularly complex and there is a lot of information to provide. In such cases the time limit can be extended by a further 20 working days as long as the authority respond within the initial time limit stating when it believes it will be able to respond in full.

Costs

Most FOI requests are free but you might be asked to pay a small amount to cover the cost of photocopies or postage. These are known as 'disbursements'. [Check the copyright status](#) of information you receive if you plan to reproduce it.



Case studies of FOI requests in the heritage sector

Clipper ship *City of Adelaide*

The clipper ship "*City of Adelaide*" is older and contains more of her original structure than the more famous *Cutty Sark* at Greenwich. Campaigners from the Jack Crawford Trust in the ship's first home port of Sunderland argued she was also one of the more visible and embarrassing failures of maritime heritage conservation and that this was the principle reason for the Scottish Maritime Museum disposing of the ship to an Australian charitable trust for the sum of £1 when the ship could and should have been preserved in the UK.

A series of FOI requests to the Scottish Government and Historic Scotland centred around the financial arrangements for the transfer of the ship which included a grant of £750,000 from the Scottish Government to facilitate the vessels transport to Australia and allegations that the conditions both for the grant and those relating to conservation imposed as a condition of allowing the export of the ship, were not being met. A further strand of FOI requests to the Scottish Government, Historic Scotland and North Ayrshire Council related to the vessel's status as a historic building and how this status was worked around/overridden in the process of allowing the ship to be exported under an Open General Export Licence rather than a specific Individual Export Licence as is usual for a significant cultural object such as a painting.

In spite of the information, in part derived from these FOI requests, leading to a specialist QC offering the legal opinion that the export of the ship was unlawful, the Scottish Government and Department for Culture Media and Sport denied or ignored this opinion and allowed the export. Campaigners were unable to raise the further funds which would have taken the case to Judicial Review and the *City of Adelaide* was exported in November 2013.

An outline of the case up to the ship's export in 2013 can be found here:

<http://www.heritagedaily.com/2013/11/oznishambles-as-top-qc-says-city-of-adelaide-export-may-be-unlawful/100193>

Given the major concerns about the application of the Waverley process regarding the export of cultural items regulations by the authorities in the case of the *City of Adelaide*, the campaign requested the records of the case from Arts Council England. After a protracted process, including an appeal to the Information Commissioner Arts Council England was released a tranche of information about the case it had initially withheld. However, a small number of e-mails were eventually withheld under the exemption relating to the prevention or detection of crime [31(1)(a) FOI Act].

The *City of Adelaide* is now housed in Port Adelaide Australia and the new owners are currently trying to raise the funds for her conservation.

SS Gairsoppa

In the case of the *SS Gairsoppa*, a specific FOI request for a copy of the tender documents and the terms and conditions of the salvage contract for silver carried aboard the torpedoed cargo vessel *SS Gairsoppa*, enabled campaigners to demonstrate that the UK Government had been underpaid when the contractor allegedly withheld over \$4 million of the Government's share of the value of recovered silver in a way which was contrary to the contract. The publicity given to this result also enabled a rival salvage company to sue the Government claiming the terms of the tender had been unfairly changed after the tender had been awarded. This action resulted in the Government being forced to pay £15 million plus costs in an out of court settlement and to begin to scrutinise its relationship with the contractor and the administration of salvage contracts.

The Registered Battlefield of Northampton

In 2012 it emerged that Northampton Borough Council was in negotiations to allow a local charity and professional sports clubs to build football pitches and associated infrastructure on council owned farmland currently occupied by a riding school, which is part of the Registered Battlefield of Northampton. From published planning documents it also became clear that council officers had not fully briefed the Council Planning Committee about the protections offered the site under the then new National Planning Policy Framework [NPPF]. As a result the local branch of the Battlefields Trust and what soon became the Northampton Battlefield Society, submitted a series of FOI requests aimed at discovering what meetings had occurred between councillors and the various potential parties to the football pitch development, what undertakings had been given and what advice councillors had been given by their officers, English Heritage and others. This information was then tested against the public positions taken by the various parties. As a result of the information recovered from these requests and the comparisons the Battlefield Society was able to mobilise support from the Battlefield Trust and English Heritage [now Historic England] which forced the Council to back track on the proposed development and ultimately commission a protection plan for the Battlefield.

Research into the Battlefield is currently ongoing while increased awareness of the Battlefield and the protection offered by the NPPF resulted in the Delapre Golf Club being forced to pay for archaeological work after it was caught undertaking groundworks for a car park extension without planning permission on another part of the Registered Battlefield site. The Northampton Battlefield Society is now in regular contact with senior officers and elected members of Northampton Borough Council and is seen very much as a part of the checks and balances within the decision making process for the historic Battlefield. The Battlefield itself is now seen much more as an asset to the town of Northampton and which can be promoted as part of Northampton's tourism and leisure package within the wider East Midlands, Wars of the Roses tourism offer which includes the Bosworth Battlefield and the new Richard III centre in nearby Leicester.

Sheffield Local List

A Sheffield local action group noticed a reference in a Council document to the city's local heritage list but could not find any further information online. A FOI request drew out the response that the city had intended to put together a local list but had shelved the plans due to budget cuts. The group currently intends to use this information to work with the Council to create a community-led local list.

Using FOI in this way can provide useful information to support or inform advocacy and develop local group responses to issues or reveal local authority stances on issues.



Useful links and further information

[Gov.UK](#): Full details about the Act and how to make a Freedom of Information request

[Information Commissioners Office](#): A full and comprehensive guide to the FOI Act and detailed information on how to undertake a request

[Journalism.co.uk](#): Useful advice from a journalist's perspective on using the FOI Act

[WhatDoTheyKnow](#): make and browse FOI requests from a central portal. Please note, this publishes any responses online so it may not be the most suitable route for pursuing a FOI request if the information you require is sensitive.

Our thanks to Andy Brockman for providing the FOI case studies in this document.