

Freedom of Information Act 2000 Sectional Summary

This summary is intended to provide a working version of the Act as it relates to the University of Sheffield. Relevant sections are annotated in plain English for ease of understanding, taking into account the Explanatory Notes issued at the same time as the Act and other guidance; those sections of limited relevance are summarised and annotated where helpful; and those sections which are not relevant are listed but not reproduced or annotated. Please note that responsibility for both the FOIA and the DPA was transferred from the Home Office to the Lord Chancellor's Department on 8 June 2001. Any references to "the Secretary of State", therefore, should now be read as "the Lord Chancellor".

*Richard Forrester, CiCS.
FOI Implementation Manager.*

Notes and abbreviations:

DPA = Data Protection Act 1998.

FOIA = Freedom of Information Act 2000.

N/A = not applicable or relevant to the University of Sheffield.

Whenever the term "public authority" or "authority" is used, this is to be understood as "the University of Sheffield" (unless otherwise indicated in the notes).

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PART IV: ENFORCEMENT	
50. Application for decision by Commissioner.	
<i>SS(1). Any person (in this section referred to as "the complainant") may apply to the Commissioner for a decision whether, in any specified respect, a request for information made by the complainant to a public authority has been dealt with in accordance with the requirements of Part I.</i>	Any applicant for information who has a specific complaint about the way their enquiry has been handled can ask the Commissioner for a ruling as to whether or not their case has been dealt with in accordance with the requirements of Part I.

<p><i>SS(2). On receiving an application under this section, the Commissioner shall make a decision unless it appears to him -</i></p> <p><i>(a) that the complainant has not exhausted any complaints procedure which is provided by the public authority in conformity with the code of practice under section 45,</i></p> <p><i>(b) that there has been undue delay in making the application,</i></p> <p><i>(c) that the application is frivolous or vexatious, or</i></p> <p><i>(d) that the application has been withdrawn or abandoned.</i></p>	<p>The Commissioner is obliged to make a ruling unless:</p> <p>(a) the complainant has not yet exhausted an authority's complaints procedure which conforms with the S45 code of practice;</p> <p>(b) there has been undue delay in making the application for a ruling;</p> <p>(c) the application for a ruling is frivolous or vexatious; or</p> <p>(d) the application for a ruling has been withdrawn or abandoned.</p>
<p><i>SS(3). Where the Commissioner has received an application under this section, he shall either -</i></p> <p><i>(a) notify the complainant that he has not made any decision under this section as a result of the application and of his grounds for not doing so, or</i></p> <p><i>(b) serve notice of his decision (in this Act referred to as a "decision notice") on the complainant and the public authority.</i></p>	<p>Requires the Commissioner either to notify the complainant that he has not made a decision (and his grounds for not doing so) or serve a "decision notice" on both the complainant and the authority.</p>
<p><i>SS(4). Where the Commissioner decides that a public authority -</i></p> <p><i>(a) has failed to communicate information, or to provide confirmation or denial, in a case where it is required to do so by section 1(1), or</i></p> <p><i>(b) has failed to comply with any of the requirements of sections 11 and 17,</i></p> <p><i>the decision notice must specify the steps which must be taken by the authority for complying with that requirement and the period within which they must be taken.</i></p>	<p>Where the Commissioner decides an authority:</p> <p>(a) failed, when required, in its duties to provide information or confirm or deny, or</p> <p>(b) failed to comply with the requirements as to means of communication (S11) or the refusal of a request (S17),</p> <p>the decision notice must specify what steps the authority must take to comply with the Act and the time period in which it must do so.</p>
<p><i>SS(5). A decision notice must contain particulars of the right of appeal conferred by section 57.</i></p>	<p>A decision notice must give details of the right of appeal to the Information Tribunal (S57) to both the applicant and the authority.</p>

<p><i>SS(6). Where a decision notice requires steps to be taken by the public authority within a specified period, the time specified in the notice must not expire before the end of the period within which an appeal can be brought against the notice and, if such an appeal is brought, no step which is affected by the appeal need be taken pending the determination or withdrawal of the appeal.</i></p>	<p>Where a decision notice requiring an authority to comply is given a time limit, that limit must not expire within the time allowed to appeal to the Tribunal against the notice. If an appeal is brought (by either the complainant or the authority), the duty to comply with the decision notice is suspended until the appeal has been concluded or withdrawn.</p>
<p>[SS(7). N/A. Applies only to certain government departments, devolved assemblies, etc.]</p>	
<p>51. Information notices.</p>	
<p><i>SS(1). If the Commissioner -</i> <i>(a) has received an application under section 50, or</i> <i>(b) reasonably requires any information -</i> <i>(i) for the purpose of determining whether a public authority has complied or is complying with any of the requirements of Part I, or</i> <i>(ii) for the purpose of determining whether the practice of a public authority in relation to the exercise of its functions under this Act conforms with that proposed in the codes of practice under sections 45 and 46,</i> <i>he may serve the authority with a notice (in this Act referred to as "an information notice") requiring it, within such time as is specified in the notice, to furnish the Commissioner, in such form as may be so specified, with such information relating to the application, to compliance with Part I or to conformity to the code of practice as is so specified.</i></p>	<p>If the Commissioner: (a) has received an application under S50, or (b) requires any information (i) to determine whether an authority has complied (or is complying) with any of the requirements of Part I, or (ii) in order to decide whether or not an authority is complying with the provisions of the S45 and S46 codes of practice, he may issue an "information notice" to an authority requiring it within a specified time and form to supply him with that information. This may relate to the application, to compliance with Part I or to conformity to the code(s) of practice as appropriate.</p>

<p><i>SS(2). An information notice must contain -</i></p> <p><i>(a) in a case falling within subsection (1)(a), a statement that the Commissioner has received an application under section 50, or</i></p> <p><i>(b) in a case falling within subsection (1)(b), a statement -</i></p> <p><i>(i) that the Commissioner regards the specified information as relevant for either of the purposes referred to in subsection (1)(b), and</i></p> <p><i>(ii) of his reasons for regarding that information as relevant for that purpose.</i></p>	<p>An information notice must contain:</p> <p>(a) where an applicant has complained under S50, a statement that he has received such a complaint, or</p> <p>(b) where he is investigating compliance with Part I or the codes of practice, a statement that the information he is seeking is relevant to his enquiries, and why it is relevant.</p>
<p><i>SS(3). An information notice must also contain particulars of the right of appeal conferred by section 57.</i></p>	<p>An information notice must give details of an authority's right of appeal to the Information Tribunal (S57).</p>
<p><i>SS(4). The time specified in an information notice must not expire before the end of the period within which an appeal can be brought against the notice and, if such an appeal is brought, the information need not be furnished pending the determination or withdrawal of the appeal.</i></p>	<p>The time limit stated in an information notice must not expire within the time allowed to appeal to the Tribunal against the notice. If an appeal is brought, the duty to comply with the information notice is suspended until the appeal has been concluded or withdrawn.</p>
<p><i>SS(5). An authority shall not be required by virtue of this section to furnish the Commissioner with any information in respect of -</i></p> <p><i>(a) any communication between a professional legal adviser and his client in connection with the giving of legal advice to the client with respect to his obligations, liabilities or rights under this Act, or</i></p> <p><i>(b) any communication between a professional legal adviser and his client, or between such an adviser or his client and any other person, made in connection with or in contemplation of proceedings under or arising out of this Act (including proceedings before the Tribunal) and for the purposes of such proceedings.</i></p>	<p>An authority is not required to supply the Commissioner with any information which relates to advice given to it by its legal adviser(s) concerning its compliance with the FOIA or concerning any proceedings (or potential proceedings) arising from the Act, including Tribunal proceedings.</p>

<p><i>SS(6). In subsection (5) references to the client of a professional legal adviser include references to any person representing such a client.</i></p>	<p>In SS(5), references to a client include anyone representing a client.</p>
<p><i>SS(7). The Commissioner may cancel an information notice by written notice to the authority on which it was served.</i></p>	<p>An information notice may be cancelled by the Commissioner by written notice to the authority.</p>
<p><i>SS(8). In this section "information" includes unrecorded information.</i></p>	<p>"Information" includes unrecorded information.</p>
<p>52. Enforcement notices.</p>	
<p><i>SS(1). If the Commissioner is satisfied that a public authority has failed to comply with any of the requirements of Part I, the Commissioner may serve the authority with a notice (in this Act referred to as an "enforcement notice") requiring the authority to take, within such time as may be specified in the notice, such steps as may be so specified for complying with those requirements.</i></p>	<p>The Commissioner may issue an authority with an "enforcement notice" if he considers the authority has failed to comply with Part I of the Act. This requires the authority within the time specified to take the steps specified to ensure compliance.</p>
<p><i>SS(2). An enforcement notice must contain -</i> <i>(a) a statement of the requirement or requirements of Part I with which the Commissioner is satisfied that the public authority has failed to comply and his reasons for reaching that conclusion, and</i> <i>(b) particulars of the right of appeal conferred by section 57.</i></p>	<p>An enforcement notice must state the section(s) of the Act with which the Authority has failed to comply, his reasons for so concluding, and must give details of an authority's right of appeal to the Information Tribunal (S57).</p>

<p><i>SS(3). An enforcement notice must not require any of the provisions of the notice to be complied with before the end of the period within which an appeal can be brought against the notice and, if such an appeal is brought, the notice need not be complied with pending the determination or withdrawal of the appeal.</i></p>	<p>Any time limit specified in an enforcement notice must not expire within the time allowed to appeal to the Tribunal against the notice. If an appeal is brought, the duty to comply with the enforcement notice is suspended until the appeal has been concluded or withdrawn.</p>
<p><i>SS(4). The Commissioner may cancel an enforcement notice by written notice to the authority on which it was served.</i></p>	<p>An enforcement notice may be cancelled by the Commissioner by written notice to the authority.</p>
<p>[SS(5). N/A. Refers to S53 which is itself N/A.]</p>	
<p>53. Exception from duty to comply with decision notice or enforcement notice.</p>	
<p>[SS(1) - (9). N/A. Applies only to certain government departments, devolved assemblies, <i>etc.</i>]</p>	
<p>54. Failure to comply with notice.</p>	
<p><i>SS(1). If a public authority has failed to comply with -</i> <i>(a) so much of a decision notice as requires steps to be taken,</i> <i>(b) an information notice, or</i> <i>(c) an enforcement notice,</i> <i>the Commissioner may certify in writing to the court that the public authority has failed to comply with that notice.</i></p>	<p>If an authority fails to comply with a decision notice (where relevant), an information notice or an enforcement notice, the Commissioner may certify that failure to comply to the High Court.</p>

<p><i>SS(2). For the purposes of this section, a public authority which, in purported compliance with an information notice -</i> <i>(a) makes a statement which it knows to be false in a material aspect, or</i> <i>(b) recklessly makes a statement which is false in a material aspect, is to have been taken to have failed to comply with the notice.</i></p>	<p>An authority which purports to comply with an information notice by knowingly or recklessly making a statement that is materially false will be taken to have failed to comply with the notice.</p>
<p><i>SS(3). Where a failure to comply is certified under subsection (1), the court may inquire into the matter and, after hearing any witness who may be produced against or on behalf of the public authority, and after hearing any statement that may be offered in defence, deal with the authority as if it had committed a contempt of court.</i></p>	<p>Where a S54 certificate of non-compliance is issued, the Court may hold an inquiry into the matter, hear evidence from witnesses on either side or statements for the defence, and deal with the authority as if it had committed a contempt of court. [Note that here it is the <i>authority</i> that is held to be in contempt of court, not any individual officer or employee.]</p>
<p><i>SS(4). In this section "the court" means the High Court or, in Scotland, the Court of Session.</i></p>	<p>Defines "the court" to mean the High Court (or Court of Session in Scotland).</p>
<p>55. Powers of entry and inspection.</p>	
<p><i>Schedule 3 (powers of entry and inspection) has effect.</i></p>	<p>Schedule 3 sets out the circumstances in which the Commissioner can apply to a circuit judge for a warrant allowing the Commissioner or his staff to enter and search an authority's premises and seize such documents as he thinks relevant where an authority has failed to comply with a Commissioner's notice or where he has reason to believe an offence under S77 has been (or is being) committed (<i>ie</i> that documents have been/are being deliberately altered with intent to prevent disclosure).</p>
<p>56. No action against public authority.</p>	

<p><i>SS(1). This Act does not confer any right of action in civil proceedings in respect of any failure to comply with any duty imposed by or under this Act.</i></p>	<p>Makes clear that no civil proceedings (by individuals or organisations) can be instigated for failure to provide information (or anything else required by the Act). [Note the important difference between this (FOIA) and the DPA, where individuals do have rights of action.]</p>
<p><i>SS(2). SS(1) does not affect the powers of the Commissioner under section 54.</i></p>	<p>Only the Commissioner is in a position to start proceedings.</p>
<p style="text-align: center;">End of Part IV</p>	