

Q&As

What is the scope of FoIA?

FoIA came into law on 01 January 2005 and applies to all public authorities, including the police service and in some cases our business partners. The first thing to note is that the Act [unlike most legislation] is fully retrospective in its operation, so this means that a written enquiry for information about 'Jack the Ripper' would technically be considered an FoIA information request.

What exactly do I need to know about FoIA?

All MPS personnel require a basic understanding of the FoIA so they are able to recognise the difference between:

Everyday requests [often verbal] made to the MPS for routine non-sensitive 'business as usual (BAU)' information requests, which you can freely disclose locally; in contrast from

Formal information requests as defined by the Act [always in some written form].

So the primary characteristic of information requests as defined by the Act is that they must be in a written form, but see the [REDACTED] document for the full list of criteria to identify the types of request involved.

If it looks like a FoIA request what do I need to do?

You [or whoever in the MPS receives the request] must forward it immediately to the Data Rights to be recorded and answered - so send by email to DataRights@met.police.uk.

It is particularly important to do this promptly as there is a strict statutory turnaround time limit of 20 working days.

Who is responsible for FoIA responses?

Please note that processing FoIA information requests is centralised so that Data Rights is the final arbiter in the MPS for responding to all FoIA requests. This helps improve MPS consistency / results for FoIA and to reduce some of the administrative burden on local BCUs.

FoIA Decision Makers / Single Points of Contact (SPOC) have been nominated to cover each BCU or business area, in order to assist Data Rights with locating information / records held locally. The team hold a list of FoIA SPOCs and you should contact Data Rights if you have

difficulty in finding this out in relation to your business unit. Once a request for assistance has been received by the SPOC they must respond to the Data Rights caseworker within 4 days to ensure Data Rights have time to respond to the request within the statutory timescales. The SPOC will also assist the team with considering cases where exemptions from disclosure apply. Data Rights will make the final decision on exemptions; whether or not to disclose information [including the duty to neither confirm nor deny (NCND) information exists] and for the issue of refusal or other notices to the requestor. In making such determinations Data Rights will take full account of the views of local BCU FoIA SPOCs and their senior management. The nominated FoIA Decision Maker / SPOC will also 'sign off' the completed request prior to releasing. Once the FoIA Decision Maker / SPOC receives the draft response, they must respond within 3 days to ensure that Data Rights have sufficient time to respond to the request within the statutory timescales.

I have located the information to answer the request but it should already have been deleted -
What do I do next?

The most important thing to do is to preserve this information. This is because once the request has been received all reasonable steps must be taken to preserve any information scheduled for destruction; even if MPS policy otherwise dictates that such information would already have been disposed of in the normal course of business.

This is because once a FoIA request is received, it becomes a criminal offence under the Act [section 77] to alter, deface, block, erase, destroy or conceal any public record containing information with the intention of preventing disclosure of any information that the applicant would otherwise be entitled to under the request.

This is another good reason why it is important to forward FoIA information requests promptly to Data Rights so that the information which is the object of the request is located ASAP. Finally, please note the offence applies to both the public authority and individuals employed by, or acting under the direction of the public authority.

Do we have to provide information not yet collated or recorded?

No - Information covered under the FoIA is usually only for information that is actually in existence and held at the time a request for information is received, not for anything that may come after receipt of the request.

However, there can be exceptions and a valid request can literally be about anything, including information held about future policing events e.g. found in e-mails, plans, briefings etc. Bear in mind, in such circumstances, there is a relevant exemption that can be relied on for information intended for future publication.

Furthermore, requests might be received that concern opinion and/or requests for information about hypothetical scenarios [e.g. 'what would happen if...']; which could involve information already in a recorded form.

What counts as 'Business as Usual' (BAU) under the Act?

The following three criteria means the request can be treated as BAU and be disclosed locally:

1. It must not indicate it is a FOIA request;
2. All the information requested will be provided with no applied exemption; and
3. All the information requested will be provided within 20 working days.

BAU is anything that the force provides to members of the public and partner agencies as part of its normal business processes. This is routine information that is non-sensitive and can be freely released into the public domain, e.g. our hours of business, how to report a crime, SNT leaflets etc. Normally most BAU requested information will be released either immediately or within 1 working day. It will remain reasonable to release some BAU information within 5 working days if it needs to be located. Beyond that you should consider if a BAU response remains appropriate. If it seems likely that the information exists but will take longer than 20 working days for you to respond contact Data Rights for advice.

Please note that much BAU information is already posted onto the MPS website where the public can also access the [MPS Publication Scheme](#); so you should freely direct requesters to those type of resources when you believe the information is already freely available.

What information do we post onto the MPS Publication Scheme?

All public authorities are required to regularly publish as much organisational information as reasonably possible to their publication scheme. This is for any information which is likely to be of public interest. This has the practical benefit of reducing the number of similar or repeated information requests.

The [MPS Publication Scheme](#) is freely accessible from the MPS website under 'Your right to information'. You should encourage requesters to look there as they will find a wide range of

corporate policies, strategies, reports, financial and other classes of information that is freely available to the public and the wider World.

All MPS BCUs / business groups must have arrangements in place to actively / regularly publish non-sensitive information to the Scheme. Finally, you should note the [MPS Publication Scheme](#) holds the disclosure log of all information released under FoIA, also freely open to public scrutiny.

Is the 20 working days a statutory time limit?

Yes - the 20 working days is a statutory time limit and the vast majority of information requests must be answered strictly within this period. You must inform Data Rights immediately if extra time is required to either find the information or to otherwise assist the team with answering requests.

What is the CycFreedom system and what does it record?

CycFreedom is the designated corporate ICT system for recording all FoIA information requests and their progress.

Does the FoIA relate to information or documents?

Strictly speaking, FoIA relates to the provision of information and clearly where relevant it is drawn out of documents and other records. Requesters cannot demand the provision of documents. However, case law has established that 'information' includes the format, layout, font, design and other presentational elements of a document. Therefore in practice if all the information can be disclosed it will often be easier and more reliable to provide the copy document in its entirety. Similarly collating data held on several systems [i.e. statistics] is not necessarily deemed to be creating new information for the purpose of answering requests, so this will also be valid.

Do I need to record the reasons why I give out/ do not give out information?

Yes - Aside from the provision of routine BAU information, the MPS could be asked at any time in the future to provide a rationale for the release of information. This could arise for instance if another police force is asked the same questions and they feel disclosure is inappropriate. The MPS must record evidence in respect of harm/ prejudice and where the public interest lies even if the MPS decides to release the information. Equally, the rationale for a decision will be needed if the requester later requests a review of the decision taken, or pursues a formal appeal to the ICO, in which case the ICO will require the original rationale.

Data Rights will record any 'harm' rationale on the CycFreedom system to ensure that the MPS retains a corporate memory of related issues. Therefore, it is imperative that Data Rights are advised of any issues or concerns regarding disclosure.

What is the 'duty to assist' requesters under the Act?

Under section 16 FoIA, the MPS is under a general duty to assist requesters in making a request for information under the Act. So the MPS should provide reasonable and proportionate advice and assistance and take into account the needs of individual requesters. To meet this duty all MPS personnel must:

- Take care not to discourage requesters from making legitimate requests for information;
- Be sensitive when dealing with individual needs; and
- Do their best, within reason, to help requesters submit information requests.

So which requesters are likely to need assistance?

In particular, police station front counter and Met CCC staff must be prepared to assist callers and help them submit their information request. It has been identified that help may be required due to:

- The age of the requester [either young or old];
- Where the person has a disability / impairment [e.g. blind / visually or hearing impaired]; or
- Where an information request is submitted in a language other than English.

In the first two circumstances, it may assist if the requester is accompanied by a friend, relative, carer, or social worker etc. who understands their special needs and is able to help frame their request. For example, in the case of disability the use of Braille, British Sign Language (BSL) or alternative formats can be explored in conjunction with advice from Data Rights. In the case of requests received in another language, there is no requirement for the MPS to translate [as this could be costly], so the requester should be advised, first of all, to seek the help of an interpreter.

Furthermore, Data Rights is only obliged legally to process and reply to FoIA information requests in English [or exceptionally Welsh, as the other official UK language]. Replies to information requests have to be legally precise in order to avoid interpretative issues that can be lost in translation between English and other languages.

Please note that the duty to assist is monitored centrally, so every month the locally designated FoIA Decision Maker/ SPOC should report instances to the team where the duty to assist has been required. If you have queries about the duty to assist provisions these should be directed to Data Rights.

Under the Act is the status of the requester relevant?

No - The status or identity of the requester [either of an individual or organisation] is generally irrelevant. Therefore information requests cannot be refused on such grounds. Please note that legitimate requests can come from anywhere in the World [not just within the UK] so that the requester's nationality and citizenship etc. is irrelevant.

FoIA Decision Makers also cannot take into account the bona fides, goodwill or the motivation of the applicant when making a decision on disclosure. Applications cannot be refused, for instance, on the grounds that they come from convicted criminals with a current HM Prison address. The main exception to this rule is when FoIA Decision Makers consider the identity of the applicant when they refuse a request under section 40 [regarding personal data] or when considering the history and context of the request for the purpose of Section 14 [vexatious and repeated requests - which can be refused].

Can an information request for the personal data of the applicant be made under the FoIA?

No - Information requests for personal data [whether that relates to the requester or a third party] will be refused under section 40 of the Act. The supply of personal data is distinctly covered by the Data Protection Act 2018 (DPA) and the General Data Protection Regulation (GDPR) under the 'right of access'.

A separate MPS process therefore applies for right of access and you must clearly advise all applicants who wish to request their own personal data to complete corporate Form 3019 and provide proof of identity etc. Such applications must then be forwarded promptly to Data Rights to process within the strict statutory time limit of 30 calendar days.

Please note that applicants cannot normally access anyone else's personal data in this way; except where they have a clear legal relationship of care relating to the subject [e.g. a parent applying on behalf of a child]. All MPS data protection queries should be referred in the first instance to Data Rights and you must not contact the Information Commissioner's Office (ICO).

How do I ensure that sensitive policing information / intelligence is not disclosed under FoIA?

There are 23 exemptions under the Act. Such exemptions are fully utilised by the MPS in order to legitimately protect all sensitive information, such as that relating to national security, operational policing and personal data. Indeed for the most sensitive material the MPS will be able to send out a 'neither confirm nor deny' (NCND) response.

Please note - Because there are so many exemptions, which are either absolute or qualified in nature, the law in this respect can be complex to apply in practice. Consequently, Data Rights has the role of designated MPS FoIA subject matter experts with sole responsibility for the application of exemptions. This approach ensures that all FoIA disclosure decisions are consistent and a corporate memory is retained on CycFreedom. Non-data right staff cannot make final decisions in isolation as this would risk the process being undermined by legal or other factors. Local FoIA Decision Makers still have an important role to play in providing the 'harm' test rationale to the team relating to the information when an exemption(s) is in contemplation. Data Rights retains a list of FoIA Decision Makers / SPOCs to ensure there is adequate coverage for the business at the local / specialist business level.

With Data Rights making the final determination as the central authority, they may have to consult with the NPCC FoIA Central Referral Unit (CRU) or other stakeholders as necessary.

Therefore, if NCND or another exemption is likely to be engaged, Data Rights will:

- First contact the local BCU / business group to ask that the designated FoIA decision maker / SPOC carries out a specific prejudice / harm test for the identified information;
- Dependent on the local response, Data Rights will then be able to carry out the full Public Interest Test (PIT) and balance test; and
- Data Rights will then be a position to issue either a full or partial refusal notice under the Act to the requester.

If information is held on national systems and is not for the purposes of FoIA requests does it have to be disclosed?

Yes - subject to exemptions. All police forces have access to and individually update records on national police databases including PNC, PND etc. The information contained on those national police systems constitutes information that is held, so even if it falls outside your force area, this information needs to be assessed by Data Rights [or where appropriate another area of the national police service / police forces] in order to respond to FoIA requests to see if it can be disclosed.

What is the purpose of the NPCC - FoIA Central Referral Unit (CRU)?

The CRU exists to assist UK police forces in relation to the application of FoIA and to ensure that there is consistency in applying the Act. They will also help deal with some 'cross-border' requests involving national police systems (e.g. PNC); where requests involving more than one force need to be coordinated; specifically to advise on exemptions; and to deal with the 'neither confirm nor deny' (NCND) provisions, particularly when they relate to security and intelligence matters.

Data Rights should be the only MPS unit to contact or refer matters to CRU as and when required in order to maintain consistency in FoIA decision making between forces.

The IOPC hold our investigative material, so how can I prevent them from disclosing our information?

There is a protocol agreed with the Independent Office for Police Conduct (IOPC) regarding sensitive material, which is managed by the NPCC - FoIA Central Referral Unit (CRU) via Data Rights.

Can an applicant's status/ history be taken into account when refusing repeated or vexatious applications under section 14?

Yes - When confirming an applicant is vexatious under section 14 of the Act, Data Rights can consider the whole history of the applicant in making FoIA requests and any other intelligence or correspondence held by the MPS and other police forces / public authorities.

What do I do if I receive an information request from a journalist?

The FoIA information request should be sent to Data Rights immediately as it would be for any other type of request. Data Rights is used to dealing with information requests from both free-lance journalists and other media / news organisations. The FoIA is applied in exactly the same way although such requests might be quite complex to answer. Data Rights may also need to liaise with the Directorate of Media and Communications (DMC) or the NPCC - FoIA Central Referral Unit (CRU), particularly where the request concerns more than one police force.

Does an Information Commissioner's Office (ICO) Decision Notice or Tribunal decisions set precedents to be followed in the future?

All Decision Notices (DN) that are issued by the Information Commissioner's Office (ICO) following the FoIA appeals process are decided on a case-by-case basis. However, the ICO can take into account previous DNs to explain their decision rationale. Please note that First-Tier Information Tribunal decisions do not set a precedent, whereas Upper-Tier Information Tribunal decisions do.

Is disclosure under FoIA a release to the world?

Yes - Information released under the FoIA is release to the World. Any disclosure is made into the public domain and not just to the applicant. Released information is published to the disclosure log section of the [MPS Publication Scheme](#). However, as an exception, consideration may be given to the identity of the applicant when applying section 40 [when it concerns personal data], which would then enable the disclosure to be made specifically to an individual.

How do the Environmental Information Regulations 2004 (EIR) differ from the FoIA?

You might receive an information request under EIR which concerns the state of elements of the environment [i.e. air / atmosphere, water, soil, land, landscape, natural sites, biological diversity and interaction between these components] and associated factors [e.g. energy consumption, noise, radiation or waste products, emissions, discharges and other releases into the environment], measures, reports and health and safety (H&S) information. In broad terms this could be anything relating to the MPS estate; our buildings, vehicles, equipment, waste disposal and H&S etc.

If you do receive what appears to be a request under EIR send it promptly to Data Rights. EIR is similar in many ways to FoIA but differs in several important respects however both EIR and FOI requests are processed by Data Rights. You need to bear in mind that unlike the FoIA, an EIR request can also be made verbally and in such a case you are under a duty to record the request on behalf of the applicant. The other thing to remember is that the same statutory time limit of 20 working days applies, hence the need for immediate referral to Data Rights.

Where do I look for a quick summary of FoIA requirements?

To gain a basic quick view / summary of FoIA read at least the following policy toolkit documents:

- The [redacted] document; along with
- [redacted] to ascertain the difference between / and how to handle either BAU or FoIA information requests; plus
- [redacted] which shows an outline of the overall Data Rights business process for dealing with FoIA information requests in the MPS.

The rest of this policy toolkit provides further details and internal/ external resources to understand FoIA processes in the MPS and how they are dealt with by the police service generally.

Where can I find the more in-depth information on FoIA?

You can obtain further information from the [REDACTED] component of this policy toolkit. It includes hyperlinks to further detail on the work of Data Rights; and key resources, such as the [Authorised Professional Practice \(APP\) - Freedom of Information Act 2000 \(FoIA\) - National Police Guidance](#) and the [ICO website](#) etc.

Who do I contact centrally with any FoIA queries?

Data Rights | Data Office | Metropolitan Police Service, is the unit tasked with answering all MPS information rights requests, as defined by the Freedom of Information Act 2000 (FoIA).

Data Rights has 15 years' experience and considerable expertise in processing FoIA requests and can therefore answer most of your queries. Data Rights will also liaise as necessary with other experts such as the Directorate of Legal Services (DLS); the national police - NPCC FoIA Central Referral Unit (CRU) and the Information Commissioner's Office (ICO). You should not refer FoIA enquiries to these bodies without the knowledge of Data Rights.

Contact Data Rights for any advice on the FoIA process through the internal email address, DataRights@met.police.uk. Members of the public can be advised to send FoIA information requests direct to email address - MPSDDataOffice@met.police.uk.