

FREEDOM OF INFORMATION ACT - DATASETS

The Freedom of Information Act 2000 (“the 2000 Act”) requires local councils to respond to requests in respect of the information they hold. NALC’s Legal Topic Note 37 (Freedom of Information) gives detailed guidance on the 2000 Act and on local councils’ responsibilities under it. This briefing note gives guidance on changes that have been made to the 2000 Act by the Protection of Freedoms Act 2012 (“the 2012 Act”).

What changes have been made by the 2012 Act?

The changes made by the 2012 Act do not place additional burdens on councils in respect of the types of information they are required to disclose. One of the purposes of the changes is to allow persons who have been provided with information under the 2000 Act to make more extensive use of the information they receive. The uses to which information disclosed by a council could be put are varied and include commercial and non-commercial purposes. The information could be used by anybody who considers it worthwhile to publish it. The changes also allow requesters to receive the information requested in a more useable (electronic) form where possible. Finally, the 2012 Act makes changes to the publication schemes councils are required to publish.

What information is covered?

The changes apply to information which forms part of a “dataset” held by a council. The legal definition of a dataset is set out in the amended s.11 (5) of the 2000 Act. Full details of the legal definition are set out in guidance published by the Information Commissioner in a document called “Datasets (sections 11, 19 & 45) Freedom of Information Act.” A copy of the full guidance can be accessed at the link below under the heading “datasets”:

<https://ico.org.uk/media/for-organisations/documents/1151/datasets-foi-guidance.pdf>

The definition of “dataset” in S.11 (5) of the 2000 Act provides that a dataset is information comprising a collection of factual information held in electronic form. Thus, any collection of facts and figures in respect of a service provided by the council or in respect of the council’s functions could be considered to be a “dataset.” If, for example, a parish council maintained a register of allotment holders in electronic form then it is likely that such a list would be considered a dataset. Other examples could include lists of burial fees, spreadsheets setting out parking charges received or items of council expenditure over £500 for councils which have gross annual income or expenditure (whichever is the higher) exceeding £200,000.

The duties in more detail

(i) Re-use

Perhaps the most fundamental change for councils is, where an applicant makes a request for information to a council in respect of information that is or forms part of a dataset held by the council and requests it in an electronic form, the requirement for councils to provide the information (which they are required to disclose) in an electronic form which is capable of re-use, so far as that is reasonably practicable (s.11 (1A) of the 2000 Act). “Capable of re-use” is likely to mean that technical obstacles to the re-use of the information (such as passwords, file formats and read-only files etc.) should be removed.

Previously, some councils had prevented others from re-using data disclosed on the grounds that they held the copyright. That barrier has been overcome by requiring councils who own the sole copyright in a dataset to grant a specified licence to individuals (s.11A(2) of the 2000 Act) which enables them to re-use the data notwithstanding the issue of copyright. In practice the licence granted will usually be an Open Government Licence. This is the default licence for datasets that can be re-used without charge. More information on the Open Government Licence can be found at the link below:

<http://nationalarchives.gov.uk/documents/information-management/ogl-user-guidance.pdf>

(ii) Publication Schemes

Parish councils are required to have publication schemes and to publish information in accordance with their publication schemes (s.19 (1) of the 2000 Act). The changes introduced by the 2012 Act now require councils to publish datasets disclosed as a result of freedom of information requests (s.19 (2A) of the 2000 Act). The duty is subject to discretion on the part of councils not to publish datasets where a council is satisfied that it is not appropriate for the dataset to be published.

Code of Practice – Datasets

By virtue of s.45 of the 2000 Act the Secretary of State for Justice is required to issue a Code of Practice in respect of the obligations of public authorities relating to datasets. Such a Code of Practice has been issued in the form of the “Secretary of State’s Code of Practice (datasets) on the discharge of public authorities’ functions under Part 1 of the Freedom of Information Act.”

<http://www.justice.gov.uk/downloads/information-access-rights/foi/code-of-practice-datasets.pdf>

The Code of Practice provides guidance to councils as to the practice the Secretary of State believes they should follow in connection with the discharge of their functions in relation to datasets. The Code provides that neither the 2000 Act nor the Code require the

creation of datasets for publication, nor do they require datasets to be updated if they would not otherwise be updated as part of the public authority's function. Councils should handle a request for a dataset in a way that meets their obligations under the 2000 Act and in accordance with the Code of Practice. A council must disclose any information it holds that has been requested under the 2000 Act, including datasets, unless an exemption applies.

Fees

S.11B of the 2000 Act, sections 34 and 35 of the Code of Practice and The Freedom of Information (Release of Datasets for Re-use) (Fees) Regulations 2013 ("the 2013 Regulations") make provision for councils to charge fees in connection with making certain datasets which are relevant copyright works available for re-use in accordance with s.11A (2) of the 2000 Act or a requirement imposed by virtue of s.19 (2A) (c) of the 2000 Act. "Relevant copyright works" is defined in s.11A (8) of the 2000 Act and means a copyright work (as set out in Legal Topic Note 39 in respect of copyright) or a database subject to a database right (as set out in Part 3 of the Copyright and Rights in Databases Regulations 1997).

The 2013 Regulations confer a power on a council to charge a fee for making a relevant copyright work available for re-use except where the council has another statutory power to charge a fee for that re-use. Regulations 2(2) to (4) prescribe how any fee that may be charged is to be determined, including how the maximum fee is to be determined. Regulations 2(5) to (7) make provisions relating to the establishment of standard fees, including a requirement on the council to specify the basis for calculating any fee or standard fee.

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