

# **Freedom of Information Act 2000**

An Introduction to the Act  
Template presentation

## Overview of session

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### Objectives of session

- ✦ Explanation of the basics of the Act
- ✦ Obligations of UEA in regards the handling of requests received under the Act
- ✦ Implication for staff work & practices arising from the Act

### Outcomes of session

- ✦ Recognize a request
- ✦ Understand how to deal with a request within UEA
- ✦ Understand the implications of the Act for your work

## Background – FOI in the UK

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### History

- ✦ Royal Assent – 30 November 1995
- ✦ In effect since 1 January 2005
- ✦ Covers all public authorities, including HE & FE

### Objectives of the Act

- ✦ Encourage openness & accountability
- ✦ Empower public in dealing with public authorities
- ✦ Rebuild trust in public authorities
- ✦ Break down secrecy culture in public authorities

## What does FOIA actually do?

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- ✦ Creates 2 statutory rights
  - ✦ To be told if requested information is held
  - ✦ To have information supplied, if held, in requested format
- ✦ Provides for exemption from release
- ✦ Mandates processes & procedures for handling requests
- ✦ Obligation to adopt & maintain a Publication Scheme
- ✦ Covers all public authorities including HE & FE

## FOIA Publication Scheme

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- ✦ Obligation to routinely & proactively provide information in a consistent, easy & swift manner
- ✦ ICO mandates categories of information to be made public & provides guidance for each sector ('model' publication scheme)
- ✦ 7 categories of information mandated
- ✦ Provision of information NOT by 'document' but by website
- ✦ ICO not prescriptive 'how' information presented, just that it is
- ✦ Can provide print-only information but must state that on web
- ✦ Recent revision – new PS as of Jan. 1, 2009

## What is covered by FOIA?

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### What is information?

- ✦ 'Recorded in any form'
- ✦ All digital and print recorded information
- ✦ Multi-media included

### What is 'held'?

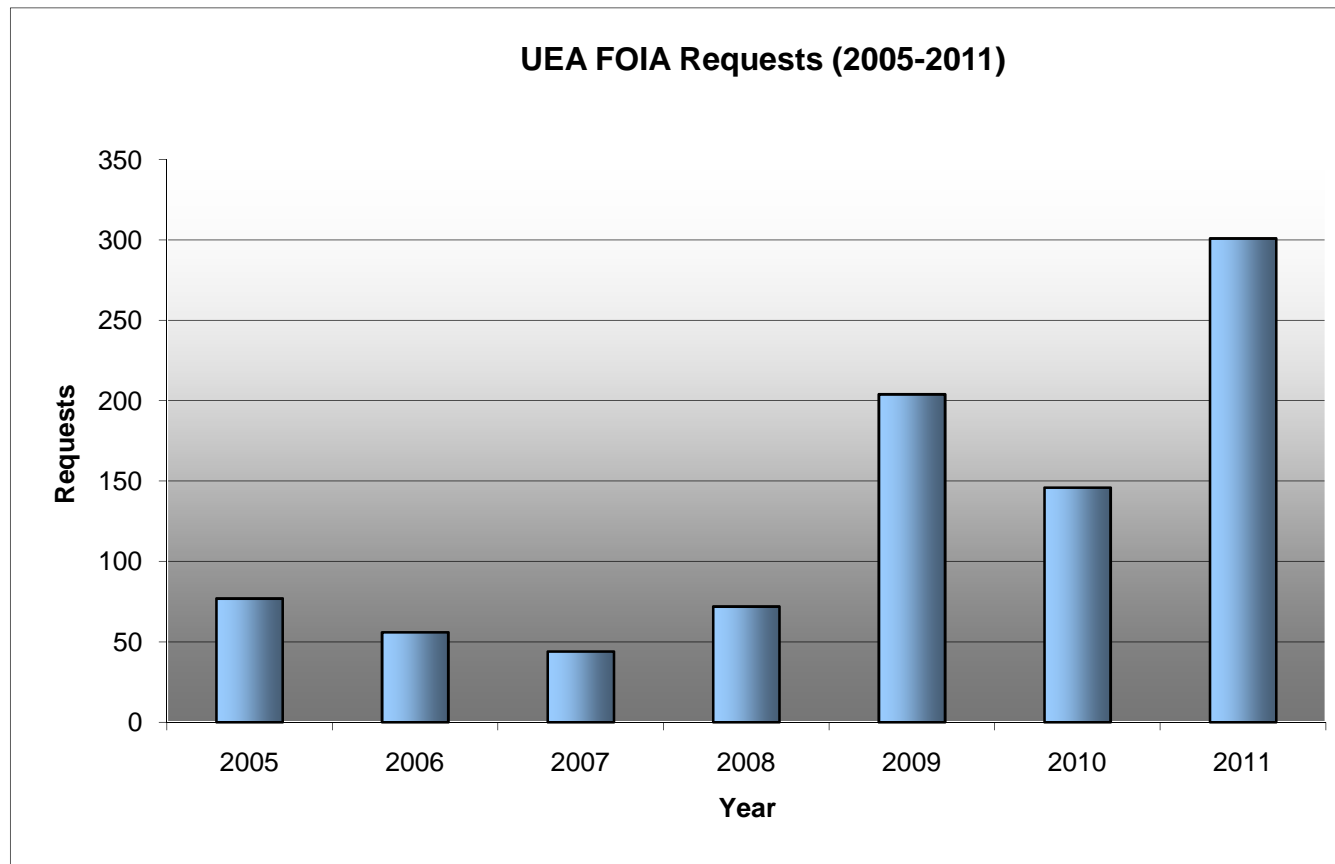
- ✦ Physically in place
- ✦ Can be 3<sup>rd</sup> party information; ownership irrelevant
- ✦ By another person on behalf of the authority
- ✦ Does not include information held on behalf of another person

## What is a FOIA request?

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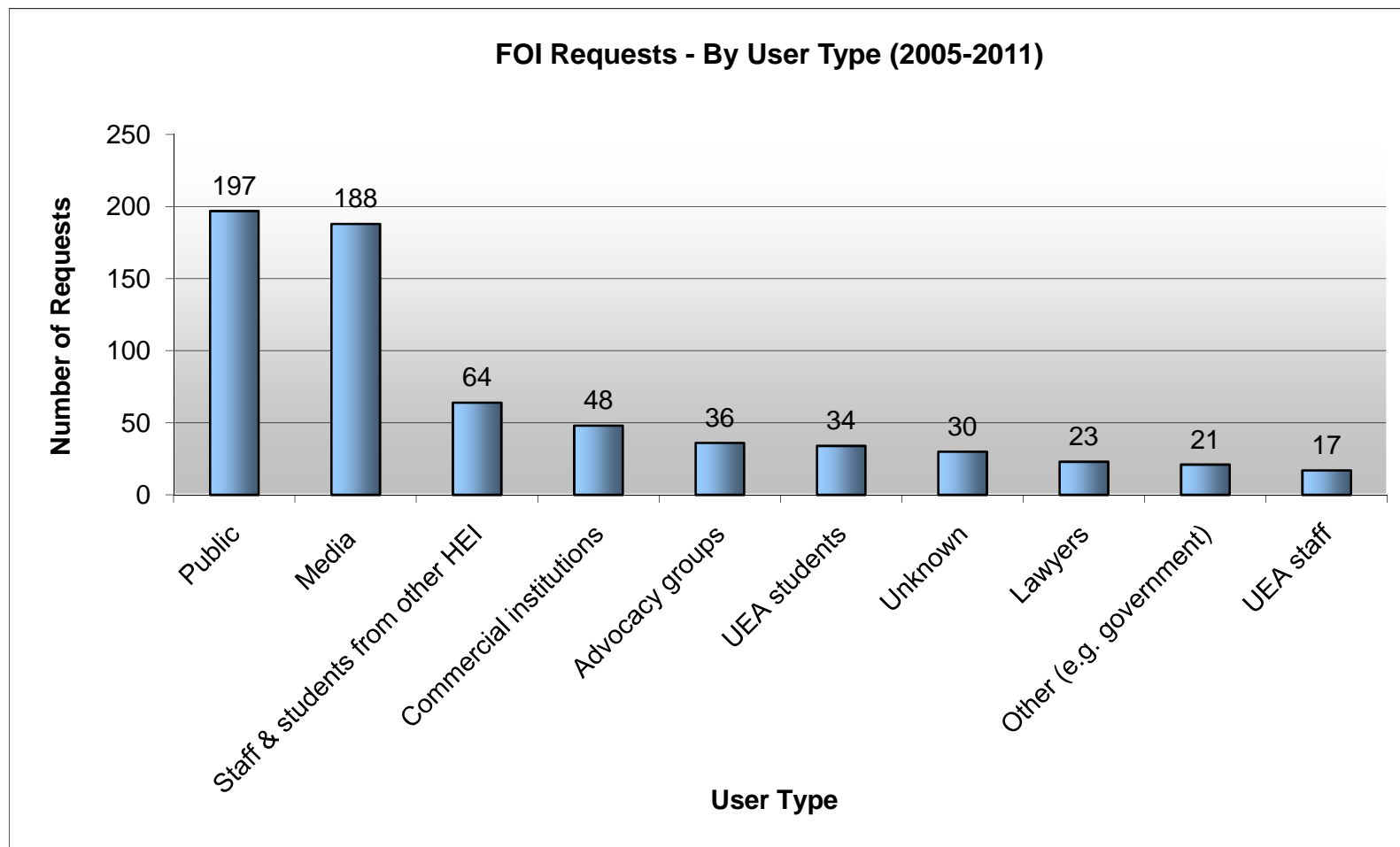
- ✦ Must be in recorded format (e.g. writing, email, fax, text!)
- ✦ Must be legible
- ✦ Must state name of applicant and contact address
- ✦ Must be clear enough to identify requested information
- ✦ Provides for exemption from release
- ✦ NO need to cite FOIA or identify it as a 'formal' request
- ✦ FOIA is location and requester 'blind'
- ✦ Can be received by anyone, anywhere

## Requests – the UEA experience





## Requests – the UEA experience



## FOIA Requests - Exercise

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- ✦ Identify what is, or is not, a request
- ✦ Identify reasons for answer
- ✦ Work together
- ✦ Have fun?!
- ✦ Group review

# Dealing with Requests

## Institutional Obligations

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- ✦ Confirm or deny that UEA has information
- ✦ If held, provide information in medium & manner of applicant's preference
- ✦ Offer advice and guidance
- ✦ Apply exemptions as necessary or appropriate
- ✦ Supply response within 20 working days

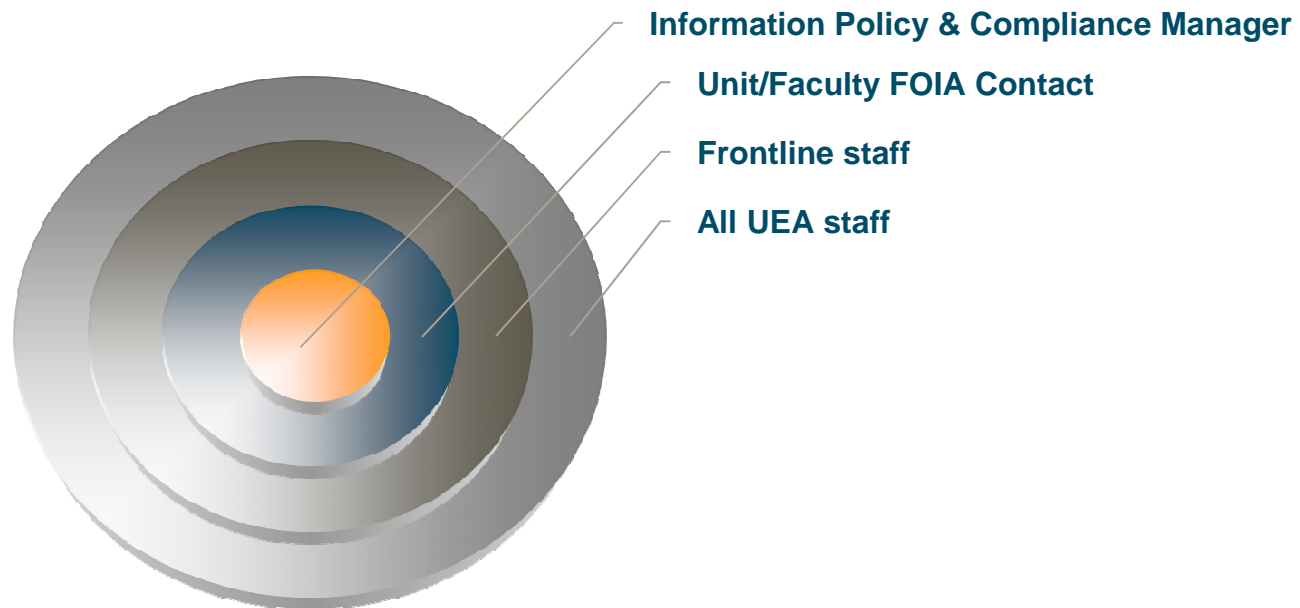
# Dealing with Requests

## UEA Administration Structure

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### FOIA Request Administration Structure



# Dealing with Requests

## What do you do?

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- ✦ Continue 'normal' release of information
- ✦ If request is for information
  - ✦ For which release is not 'normal' business
  - ✦ Where you are unsure how to proceed
- ✦ Refer to FOI Contact for your Faculty/Unit
- ✦ Information Policy & Compliance Manager available
- ✦ Can't ask requester purpose of request

## Normal Business - Examples

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- ✦ Requests for publicity material
- ✦ Information publicly available on website
- ✦ Information normally given to requester automatically
- ✦ Information held in Library or Archives
- ✦ Any information that is not recorded (e.g. verbal opinions)

# Non-Disclosure of Information

## Exemptions

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- ✦ Presumption of disclosure but exemption to disclosure permitted or required under the Act
- ✦ 23 separate exemptions
- ✦ 2 types of exemption
  - ✦ Absolute – no obligation to release if exemption applies
  - ✦ Qualified – exempt information is subject to additional public interest test
- ✦ Exemption determined by Policy & Compliance Manager in consultation with FOI Contacts

# Non-Disclosure of Information

## Exemptions – Examples

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### **Absolute exemptions**

- ✦ Personal information
- ✦ Environmental information
- ✦ Information provided in confidence
- ✦ Information accessible by other means

### **Qualified exemptions**

- ✦ Information intended for future publication
- ✦ Law enforcement
- ✦ Endangerment of health and safety
- ✦ Prejudice to commercial interests
- ✦ Inhibits free & frank exchange of views or provision of advice



# Non-Disclosure of Information

## The Public Interest Test

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- ✦ Presumption of a general public interest in favour of disclosure
- ✦ Public interest factors favouring disclosure
  - ✦ Promotion of openness, transparency & accountability
  - ✦ Increasing public debate & understanding
  - ✦ Furtherance of good administration
- ✦ Public interest is NOT private interest nor something merely of interest to the public
- ✦ Public interest in non-disclosure within exemptions themselves
- ✦ Assertion not enough; must have evidence
- ✦ Public interest varies over subject, time
- ✦ Test is balance but non-disclosure must be strong to overcome presumption in favour of disclosure

# Non-Disclosure of Information

## Prejudice – A Key Concept

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- ✦ Some exemptions are 'effect-based' with prejudice as the 'effect'
- ✦ 'Prejudice' is harm or damage; harm or damage can be inferred from exemption claimed
- ✦ Degree of harm not specified but must be more than trivial
- ✦ Must be likelihood of harm - possibility NOT enough
- ✦ Requires, in effect, risk assessment of disclosure considering nature of prejudice, likelihood of prejudice & linkage between disclosure and harm
- ✦ Evidence must be shown of prejudice & likelihood; unsupported speculation is not sufficient

# Non-Disclosure of Information

## Other grounds for non-disclosure

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### Appropriate limit (s.12)

- ✦ If request cost is over appropriate limit an institution MAY impose a fee or refuse to respond to the request
- ✦ Appropriate limit
  - ✦ Time/money to locate, retrieve, extract & do initial review
  - ✦ £450 calculated @ £25/hour = 18 person-hours
  - ✦ Limit does **not** include exemption assessment, excision of information nor communication with applicant
- ✦ UEA policy – No response if request over appropriate limit
- ✦ No obligation to provide information up to appropriate limit
- ✦ Costs can be aggregated for more than one request under certain conditions

# Non-Disclosure of Information

## Other grounds for non-disclosure

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### **Vexatious or repeated requests (s.14)**

- ✦ A request is vexatious if:
  - ✦ No serious purpose or value, or
  - ✦ Designed to cause disruption, or
  - ✦ Has effect of harassing the authority
  - ✦ Compliance would impose significant burden
  - ✦ Manifestly unreasonable or obsessive
- ✦ The request must be vexatious, not the requester
- ✦ Context & past history can be considered
- ✦ No obligation to respond where request is identical or substantially similar and a reasonable time has not elapsed between the two requests

## FOIA requests - Exercise

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- ✦ Identify proper action to take
- ✦ Identify reasons for answer
- ✦ Work together
- ✦ Have fun?!
- ✦ Group review

## Disclosure of Information

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- ✦ Must be in form of applicant's choice
- ✦ Must be within 20 working days
- ✦ Information, not documents, disclosed
  - ✦ Summary of information acceptable
  - ✦ Document alone not released – must contain information
- ✦ Must cite and explain any exemptions, and where required, explain public interest in non-disclosure
- ✦ Must provide information on appeal/complaint process
- ✦ If possible, add disclosed information to Publication Scheme

## FOIA – Implications for Staff

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- ✦ All information is public information so write & structure information with FOIA in mind
  - ✦ Be professional in recording information/opinions
  - ✦ Only record what is required or what you want read
  - ✦ Separate/segregate potentially exempt information
- ✦ Obligation to respond quickly
  - ✦ Deal with correspondence in a timely fashion
  - ✦ Recognize a request & act and/or ask - Don't ignore it!

## FOIA – Implications for Staff

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- ✦ Records management
  - ✦ Need to locate information – do you know where it is?
  - ✦ Must provide ALL information held – should we hold it?
- ✦ Obligation to provide advice and guidance
  - ✦ Be helpful in regards rights under Act (phone -> paper)
  - ✦ Direct requester to further information and/or contacts
  - ✦ No obligation to answer verbal request under FOIA
- ✦ Business as normal wherever possible



## What do you think?

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- ✦ Your issues and questions
- ✦ Feedback
- ✦ Further information
  - ✦ UEA website (<https://www.uea.ac.uk/is/foi>)
  - ✦ David Palmer ([david.palmer@uea.ac.uk](mailto:david.palmer@uea.ac.uk); ph: x3523)
  - ✦ ICO website (<http://www.ico.gov.uk>)
  - ✦ JISC Legal (<http://www.jisclegal.ac.uk/LegalAreas/FreedomofInformation.aspx>)

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