

Are local authority companies subject to the Freedom of Information Act 2000?

In this article we look at local authority companies and whether they are subject to the Freedom of Information Act 2000. And for those that are, what information are they legally obliged to submit.

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What is the Freedom of Information Act 2000?

The Freedom of Information Act 2000 (**FOIA**) gives any person, including companies and organisations, rights of access to information which is held by public authorities, subject to certain exceptions or exemptions. The purpose of the FOIA is to allow the public to engage in discussions regarding policy issues and the processes public authorities undertake when making decisions; it is also an effective method of holding the government, local authorities and other bodies to account for their actions.

To whom does it apply?

The FOIA applies to “public authorities”.

Section 3(1) of the FOIA defines “public authorities” as, inter alia:

“(a) subject to section 4(4), any body which, any other person who, or the holder of any office which:

(i) is listed in Schedule 1, or

(ii) is designated by order under section 5, or

(b) a publicly-owned company as defined by section 6.”

The FOIA therefore allows for a wide range of organisations to be classified as “public authorities” including government departments, local authorities and NHS bodies.

Section 4(4) provides that where certain conditions are met, a public authority shall cease to be a public authority for the purposes of the FOIA. This can be ignored for the purposes of this article.

What is a publicly-owned company and when would it be subject to the FOIA?

In addition to public authorities, the FOIA captures private companies wholly owned by a public authority or wholly owned by one or more bodies from the “wider public sector”. The definition of a publicly-owned company is set out in section 6 of the FOIA as follows:

“(1) A company is a “publicly-owned company” for the purposes of section 3(1)(b) if...

(b) ... it is wholly owned by the wider public sector...

(2) For the purposes of this section...

(b) ... a company is wholly owned by the wider public sector if, and only if, every member is a person falling within sub-paragraph (i) or (ii)

(i) a relevant public authority or a company wholly owned by the wider public sector, or

(ii) a person acting on behalf of a relevant public authority or of a company wholly owned by the wider public sector...

To note, the term “the wider public sector” means one or more relevant public authorities.

3) In this section...

... “relevant public authority” means any public authority listed in Schedule 1 other than—

(a) a government department, or

(b) any authority which is listed only in relation to particular information.”

This means that if any one of the shareholders of a company is listed in Schedule 1 of the FOIA only in relation to particular information (for example, the Competition and Markets Commission, which is listed in respect of information held otherwise than as a tribunal), then that shareholder will not be a relevant public authority and, because of this, the company will not qualify as a publicly-owned company. This would seem to suggest that where a private entity has some form of ownership of the company in question, it would not be classed as a wholly-owned local authority company, it would therefore not fall under the definition of a publicly-owned company and, as a result, would not be subject to the FOIA.

The purpose of section 6 of the FOIA is to cover situations where a local authority has transferred responsibility for its services to a private company which is wholly owned by the local authority.

The following are examples which show how section 6 of the FOIA brings such companies within the definition of a public owned company:

1. Wigan Metropolitan Development Company Limited is wholly owned by Wigan Council and was established in order to promote economic development and investment within the Council's area; and
2. an arm's length management organisation (**ALMO**) can be set up by local authorities and is the most common example of a publicly-owned company. Leeds City Council owns three ALMOs (East North East Homes Leeds, West North West Homes Leeds and Aire Valley Homes Leeds) who are responsible for managing council-owned housing in Leeds.

A company that satisfies the provisions of the FOIA, as set out above, will be held to be a public authority in its own right and will be expected to carry out the same obligations and responsibilities as any other public authority that complies with the FOIA. Further, where a company is wholly owned by a number of local authorities, it will also constitute a public authority for the purposes of FOIA.

The public authority or authorities which 'own' the company or companies should ensure that they are aware of the obligations imposed by the FOIA.

What types of information must a wholly-owned public company provide under the FOIA?

In addition to the obligation to respond to requests made by members of the public under the FOIA, the Information Commissioner's Office (**ICO**) expects wholly-owned companies which are public authorities to meet the legal commitments under the Model Publication Scheme.

The Model Publication Scheme commits a public authority (i.e. a company which satisfies the provisions of the FOIA) to proactively publish or otherwise make available to the public, as a matter of routine, information which is held by the public authority and falls within seven different classes of information. These each have distinct headings and cover a relatively wide variety of information, as follows:

1. “Who we are and what we do”

This covers organisational information, locations and contacts; constitutional and legal and governance information. Under this class, it is necessary to provide details regarding the roles and responsibilities of the people working in the company at a senior level, the company's articles of association and board membership. Gender pay gap reporting also falls within this class if the company has a head count of 250 staff or more.

2. “What we spend and how we spend it”

Covers financial information relating to projected and actual income and expenditure, tendering, procurement and contracts. This class requires that, as a minimum, financial information for the previous financial year is made available, including: financial statements; budgets and variance reports; annual accounts; loans sanctioned; expenditure; financial audit reports; staff pay and grading structure;

staff and board members' allowances and expenses; capital programme; procurement and tender procedures; and lists of contracts awarded and their value (for contracts in excess of £25,000).

3. **“What our priorities are and how we are doing”**

Covering strategy and performance information, plans, assessments, inspections and reviews. Under this class, information for the current and previous three years should be made available, including: strategic and business plans, aims and objectives; annual reports; customer surveys; and data protection impact assessments or any other relevant impact assessments (such as health and safety and equality).

4. **“How we make decisions”**

This class covers policy proposals and decisions; decision making processes; internal criteria and procedures; consultations. The information made available under this class should cover at least the current and previous two years and include board papers, inclusive of agendas, supporting papers and minutes of meetings.

5. **“Our policies and procedures”**

Covers current written protocols, policies and procedures for delivering services and responsibilities. Only current information should be published in this class, including: policies and procedures for conducting business; policies and procedures for delivering services; policies and procedures for recruiting and employing staff; equality and diversity policies; health and safety; customer service and complaints policies and procedures; records management, personal data and access to information policies; and charging regimes and policies.

6. **“Lists and registers”**

This class covers information held in registers required by law, and other lists and registers relating to the activities of the company. Only information contained in currently-maintained lists should be published in this class, including: any lists or registers that the company may be required to produce in the conduct of business; a list of main contractors or suppliers; asset registers; information asset register; disclosure logs; any register of interests kept by the company; registers of gifts and hospitality provided to board members and senior staff; register of people with significant control; and details of the locations of any overt CCTV surveillance cameras operated by (or on behalf of) the company.

7. **“The services we offer”**

Covering advice and guidance, booklets and leaflets, transactions and media releases, as well as a description of the services offered. The information made available under this class should include: details of the company's services; an explanation of the services for which the company is entitled to recover a fee, together with those fees; any relevant leaflets about the company/its business/services; and corporate communications and media releases.

Although, at first sight, the above categories and lists of information which fall within them may appear rather onerous, it should be noted that there is no requirement to make information available if it is exempt under the FOIA exemptions or exceptions under the Environmental Regulations 2004, nor if its release is prohibited under other legislation (e.g., the UK GDPR).

Furthermore, there is no expectation to publish if the information:

- is easily accessible by the public through an external website (e.g., Companies House listings);
- is not held by the company;
- is archived or out of date; or
- if it would be impracticable or resource intensive to prepare the material for routine release.

Nonetheless, wholly-owned public companies and the authorities which own them should familiarise themselves with the obligations imposed by the Model Publication Scheme and ensure they remain compliant with the obligations set out in the FOIA.

Further detailed guidance can be found on the ICO's website and within their relevant publications through the following links:

[What information do we need to publish? | ICO](#)

[model-publication-scheme.pdf \(ico.org.uk\)](#)

[Definition document - Wholly-owned companies v 4.0 \(ico.org.uk\)](#)

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