

Freedom of Information

Volume 9, Issue 5

May / June 2013

Headlines

- Graham Smith: Section 12 to be reviewed, p.17
- Rarely used FOI exemption deployed by Speaker, p.18
- SIC gives updated guidance on FOI requests and voicemail/telephone calls, p.19

Contents

<i>Expert comment</i>	2
<i>FOI, practically speaking Part 3 — getting vexed</i>	3
<i>Private emails and contracting out — overcoming the challenges</i>	6
<i>A right to unknown information?</i>	9
<i>Recent decisions of the Commissioner and Tribunal</i>	11
<i>FOI News</i>	17

New guidance on vexatious/manifestly unreasonable requests

The Information Commissioner's Office has published new guidance on dealing with vexatious, manifestly unreasonable and repeated requests.

The guidance has been widely anticipated since important decisions were made by the Upper Tribunal earlier in 2013. Those decisions interpreted the vexatious provisions of FOI in a manner that was more sympathetic to public authorities than the existing ICO guidance.

The new guidance recognises these decisions, and also the new political and legal

realities following post-legislative scrutiny of FOIA.

Launching the guidance at PDP's 9th Annual Freedom of Information Conference in London, the Deputy Commissioner, Graham Smith, said "We have deliberately moved away from the 5 characteristics that we had before [in the ICO's previous 2008 guidance]. The big shift is that the burden on the authority of dealing with the request is something that the Upper Tribunal is saying that you've got to look at."

In relation to the new em-

phasis on the burden on authorities, the guidance advises that authorities should: (1) consider the purpose of the request if apparent and any wider public interest; (2) balance this against the impact on the authority; and (3) take the context and relevant history into account.

Mr Smith said "we have developed key indicators." There are 13 in total and these are based on the ICO's experience of dealing with section 14. The guidance emphasises that these are not 'qualifying criteria',

[\(Continued on page 17\)](#)

New FOIA exemption now in force and other changes on horizon

A new research exemption for the higher education sector will be inserted into FOIA through the Intellectual Property Bill, which was released after the recent Queen's Speech.

The new section 22A FOIA will exempt from disclosure continuing programmes of research intended for future publication. The information should be obtained in the course of, or derived from,

a programme of continuing research that is intended for future publication.

The information will be exempt only if disclosure would, or would be likely to, prejudice a matter listed in that subsection. Therefore, the exemption will not be an absolute exemption; it will be subject to the public interest balance test.

Public authorities will not

be required to confirm or deny that they hold section 22A information if, or to the extent that, compliance would, or would be likely to prejudice, any of the matters mentioned in subsection (1)(b) FOIA.

Meanwhile, other amendments to the Freedom of Information Act made by the Protection of Freedoms Act

[\(Continued on page 17\)](#)