



Paediatric Intensive Care Audit Network

Freedom of Information Act
Guidance Information
July 2006

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Summary of PICANet's responsibility under the Freedom of Information Act 2000

1. Policy Statement

PICANet will use all appropriate and necessary means to ensure that it complies with the provisions of the UK Freedom of Information Act 2000.

2. General Rights of Access

Section 1 of the Act gives a general right of access from 1st January 2005 to recorded information held by PICANet, subject to certain conditions and exemptions contained in the Act (see Appendix A). These provisions are fully retrospective and are not limited purely to British citizens.

3. Received Requests

All requests to PICANet should be made in writing (received by e-mail, fax or postal service). The applicant should clearly define the following:

- who they are
- what agency they are employed by, if any.
- contact details including telephone numbers and mail addresses
- what it is they want to know
- how they wish to receive the information if the request is accepted

Please note that PICANet cannot ask the applicant why they require the information and what they intend to do with the information. It must be assumed that once provided to the applicant the information is effectively available within the public domain. The Information Commissioner and Lord Chancellor have issued a statement to the effect that the purpose for which information is used is irrelevant.

4. Conditions and Exemptions

The duty to confirm or deny that information is held is subject to certain conditions and exemptions listed in Appendix A of the Act. If information requested is available in any reports that have already been produced by PICANet, the applicant will be advised that the information they require may be available and they will be directed to the relevant report.

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5. Charges and Fees

PICANet will not charge for information that it has chosen to publish in its Annual Reports. Applicants requesting such information will be directed to the reports. There will be a charge for information that is requested that cannot be provided within two and a half working days or for less than the threshold of £450 set out in the Act. It should be noted that the £450 limit equates to 18 person hours of work at £25 per hour, this hourly rate is fixed regardless of the grade of staff. Applicants will be advised in writing (sent by e-mail or postal service) that a charge will be incurred for the information they have requested and it will be made clear how much this will be.

EXPLANATION: Any information provided within 2.5 days has to be supplied for free.

The Act states that a threshold charge of £450 (equating to a delivery time of 2.5 days), below which information must be provided free of charge, is acceptable for all public authorities with the exception of central government and parliament. As such, PICANet may calculate a cost for providing information above this threshold which takes into account only the costs that PICANet can reasonably expect to incur in relation to the request in: –

- a) determining whether or not it holds the information
- b) locating the information, or a document which may contain the information
- c) retrieving the information, or a document which may contain the information, and
- d) extracting the information from a document containing it.

If a request would cost more than the appropriate limit, PICANet are not obliged under Section 1 of the Act to answer it. However, in deciding how to handle a request PICANet must remember its duty under Section 16(1) which requires PICANet to “provide advice and assistance” to persons making requests for information. If a request is particularly wide ranging, and therefore likely to be expensive to answer, PICANet should consider discussing this with the applicant to see if the question could be refined to a more manageable level.

If the request is still over the threshold limit, PICANet has a number of options:

- 1) It can decide not to provide the information
- 2) It can answer and charge any permitted fee
- 3) It can answer without charging
- 4) It can supply such information as is readily available under the £450/2.5 day/18 person hour threshold.

Section 13 of the Act allows public authorities to charge fees when they choose to reply to a request that they do not have to, because it exceeds the appropriate limit. However, Section 13 does not displace any existing statutory legal power (including court orders), to charge for the disclosure of such information. If a public authority already has a legal power to charge, it can continue to rely on this existing power.

6. Time Limits for Compliance

PICANet will ensure that it complies with the duty to confirm or deny and to provide the information requested within twenty working days of a request in accordance with Section 10 of the Act.

The time limit starts the day **after** the request is received, or the day PICANet receives from the requestor the additional clarification or information it reasonably requires, in order to identify and locate the information requested.

The Information Commissioner recommends the following good practice points:

- To cover periods of absence, it would be advisable for staff to use the automated “out of office” facility for e-mails and to provide alternative contacts.
- Where an alternative contact is provided by an “out of office” message, the contact should advise the original recipient of action taken in respect of the request.
- It would be good practice to acknowledge receipt of requests and to refer to the 20 working day time limit, so applicants know their request is being dealt with.
- It would also be good practice to let applicants know when they might expect a full response.

These points are written into PICANet’s ‘Policy / procedure for the release of PICANet data’ July 2006.

There are circumstances where the time limit of 20 working days may stop. If PICANet is charging a fee (which must be calculated according to the fees regulations), the applicant has a maximum period of 3 months to pay. According to Section 9 of the Act, the 3 months would begin on the day the fees notice is “given” to the applicant.

According to Section 10 of the Act, the period starting with the day the notice is given and ending on the day the payment is received is disregarded from the 20 working day calculation. This means the 20 working day clock would in effect stop the day before the notice is sent and would only re-start the day after the fee was received and the cheque had cleared.

7. Means of Providing Information

When an applicant, on making a request for information, expresses a preference for communication by any particular means, PICANet shall so far as reasonably practicable give effect to that preference in accordance to Section 11 of the Act. If the requested medium incurs a cost the applicant will be informed.

8. Refusal of Requests

If PICANet chooses to refuse a request for information under any of the exemptions under Part II of the Act, the applicant shall be informed in writing (by e-mail, fax or postal service) of the reasons for this decision within twenty working days. The applicant shall also be informed of the procedures for making a complaint about the discharge of PICANet under the Act and of the right conferred by Section 50 of the Act.

PICANet will keep a record of instances where estimates of the date for compliance are exceeded, and where this happens more than occasionally, take steps to identify the problem and rectify it.

PICANet will keep a record of all notices issued to refuse requests for information.

Section 41 of the Act is one of many that sets out an exemption from the right to know if the information in question was provided to the public authority (PICANet) in confidence and its disclosure (other than under the Act) could lead to legal action for breach of confidence. More information on the exemptions can be found on the Office of Public Sector Information website:

<http://www.opsi.gov.uk/acts/acts2000/20000036.htm>

9. Duty to Provide Advice and Assistance

PICANet will ensure that it will provide all reasonable advice and assistance, to persons who propose to make, or have made, requests for information. This is a duty under Section 16 of the Act.

In many cases, the nature of the advice and assistance to be offered will be clear at the outset. In other cases, communication with the applicant may be required to establish what advice and assistance might be appropriate, and therefore reasonable.

Examples of what is reasonable may include:

- Keeping an applicant advised of progress with regard to their request
- Advising a potential applicant of their rights under the Act

- Assisting an applicant to focus their request, perhaps by advising on the types of information
- Advising an applicant if information is available elsewhere, and explaining how to access this.

APPENDIX A

EXEMPT INFORMATION UNDER PART II OF THE FREEDOM OF INFORMATION ACT 2000

There are two types of class exemption:

- (a) **Absolute**, which do not require a test of prejudice or the balance of public interest to be in favour of non-disclosure.
- (b) **Qualified by the public interest test**, which requires the public body to decide whether or not it is in the balance of the public interest to disclose information. The interest in withholding must **outweigh** the interest in disclosure.

With the exception of Section 21 (information available by other means) exemptions apply not only to the communication of information but also to the duty to confirm or deny, if that itself would disclose information that it is reasonable to withhold.

The absolute exemptions under the Act are:

- Section 21, Information accessible to applicant by other means
- Section 23, Information supplied by, or relating to, bodies dealing with security matters
- Section 32, Court Records
- Section 34, Parliamentary Privilege
- Section 36, Prejudice to effective conduct of public affairs (so far as relating to information held by the House of Commons or the House of Lords)
- Section 40, Personal Information (where disclosure may contravene the Data Protection Act 1998)
- Section 41, Information provided in confidence
- Section 44, Prohibitions on disclosure

The exemptions that are qualified by the public interest test are:

- Section 22, Information intended for future publication
- Section 24, National Security
- Section 26, Defence
- Section 27, International Relations
- Section 28, Relations within the United Kingdom
- Section 29, The Economy
- Section 30, Investigations and proceedings conducted by public authorities
- Section 31, Law Enforcement
- Section 33, Audit Functions
- Section 35, Formulation of Government Policy

- Section 36, Prejudice to effective conduct of public affairs (for all public authorities except the House of Commons and the House of Lords)
- Section 37, Communications with Her Majesty, etc. and honours
- Section 38, Health and Safety
- Section 39, Environmental Information
- Section 42, Legal Professional Privilege
- Section 43, Commercial Interests