

FREEDOM OF INFORMATION ACT: PUBLICATION SCHEME FOR GPs

1. What is the Freedom of Information Act?

The Freedom of Information Act 2000, which came about as a result of one of the major commitments in the Labour Party's 1997 manifesto, creates new rights of public access to information held by public authorities, as defined under the Act. To facilitate this, it obliges such public authorities to make it clear to the public what information they hold.

Some types of information are exempt from the requirement to make them available. These include:

- personal information, the handling and disclosure of which is regulated by the Data Protection Act 1998
- information whose disclosure would harm the commercial interests of the public body or of a third party
- information whose disclosure would harm the public good to an extent that is greater than the presumed public good of releasing it.

The Act specifically defines GPs as public authorities. The Information Commissioner, who regulates the Act, has ruled that GPs may act co-operatively within their practice structure to discharge their obligations under the Act.

2. What does this mean for GPs?

Like all other public authorities, practices must produce a publication scheme by **31 October 2003**. This is basically a list or index of;

- the types of information that a practice holds
- a description of how it can be obtained
- an explanation of any charges that might apply (regulated by the Act)
- and an explanation of the types of information that the GP holds but cannot make available (and why).

3. How do GPs produce a publication scheme?

The NHS has set up a Freedom of Information Act project team to give advice and guidance to the NHS on its duties under the Act. This team has worked with the BMA, through its medico-legal committee, to produce a model publication scheme for GPs.

Publication schemes must be in a format agreed with the Information Commissioner and the model publication scheme has received approval. All GPs will have received a letter from the Information Commissioner drawing their attention to the model publication scheme, which can be accessed on the Information Commissioner's web site

<http://www.dataprotection.gov.uk>

The NHS Freedom of Information website now has available an online publication scheme tool for independent practitioners

<http://www.foi.nhs.uk>

There is an example of how to customise the model on Wessex LMCs' web site at

<http://myweb.tiscali.co.uk/lmclive/genguide/ifo/ifo.html>

4. What information must GPs make available? How do they make it available?

Any practice that already complies with its Terms of Service in producing an information leaflet should have little difficulty in producing its publication scheme.

The Information Commissioner has agreed that PCT websites can host practice publication schemes so this needs to be arranged with each PCT. This will be a task for LMCs. If the practice publication scheme is on the PCT website the practice will have complied with the Act although arrangements will need to be made to update practice publication schemes as necessary.

Some GPs have questioned the need to include various pieces of information in the publication scheme, particularly financial information. It is important to recall the basic premise of the Act, that **all information should be disclosed unless there is an overriding reason not to**.

5. Does this mean that GPs will have to make their income public information?

There is a particular expectation that public authorities will account for how they spend public funds. There can be no argument about the fact that a practice's NHS funding represents public money, as does the expenditure on drugs prescribed by the clinicians in the practice. Only if a practice can make a cogent case that its commercial interests would be harmed by disclosing details of the public money it is responsible for spending would it be justified in not disclosing that information.

It should be noted that the level of disclosure agreed for the publication scheme would not allow an individual GP's personal income to be calculated. When completing the model scheme practices may prefer to use the phrase "total practice funding", rather than "total practice income". Clearly the more information that appears in the publication scheme the fewer requests for specific pieces of information the practice may have to respond to after the full implementation date of the Act, which is 1 January 2005.

6. Do GPs have to use the model publication scheme or can they design their own?

Practices who do not wish to use the model scheme approved by the Information Commissioner are at liberty to design their own publication schemes but it should be noted that these need to be submitted to the Information Commissioner for her approval by **31 August 2003**. Every practice that does not submit an individual publication scheme for approval will be assumed, by 1 November 2003, to have used the model scheme.

7. *What happens if GPs do not comply with the Act?*

The Act contains complex provisions regarding enforcement but the ultimate sanction is that non-compliance with the Act can be regarded as contempt of court, for which a judge may impose an unlimited fine or imprisonment.

8. *Will GPs be able to charge fees for access to the information specified in their publication scheme?*

It will be possible for public authorities to charge fees for access to the information set out in the publication scheme and to withhold disclosure until the fee is paid. The applicant will have three months from the date of notification to pay the fee before the request lapses.

Regulations governing fees have not yet been laid. These regulations will be able to place a cap on fees or prohibit them altogether for certain types of request.

A wealth of further information and links to other sites can be found on the web sites mentioned in this document. The GPC urges all practices to ensure that their publication schemes will be ready by 31 October 2003.