

Practitioner Certificate in Freedom of Information

Syllabus

The Syllabus for the Practitioner Certificate in Freedom of Information Programme covers all practical aspects of Freedom of Information law in England, Wales and Northern Ireland, covering the Freedom of Information 2000 ('FOIA') and the Environmental Information Regulations 2004 ('EIR'). Completion of the Programme, including passing the Examination, demonstrates that the candidate has achieved a thorough understanding of the practical application of FOIA and EIR legal requirements.

The Syllabus is comprised of four compulsory Parts, each of which comprise 25% of the Programme. The four Parts and the content of the Syllabus for each Part are set out below.

(Part 3, comprising of FOI and Data Protection, also forms one of the Elective Elements of the Practitioner Certificate in Data Protection and therefore would also count towards 20% of the Syllabus for the Practitioner Certificate in Data Protection Programme should a candidate wish to undertake that Programme.)

Part 1 - FOI Essential Knowledge

- an overview of FOIA, its structure and core provisions including the definition of "recorded information", which organisations FOIA applies to and the Codes of Practice issued pursuant to sections 45 and 46
- the inter-relationship of FOIA with the Data Protection Act 1998 ('DPA') and EIR
- publication schemes and how to publish in accordance with the Model Publication Scheme 2009
- how to handle requests including what constitutes a valid request, when information is "held", the timescales for complying with a request and the duty to advise and assist, with reference to the Section 45 Code of Practice on the Discharge of Public Authorities' Functions under Part I of FOIA (the Section 45 Code of Practice)
- how to apply the Appropriate Limit, including what time can be taken into account for the purposes of estimating the cost, what charges can be made under the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004, when requests can be aggregated for the purposes of the Appropriate Limit and when to issue fees notices
- how to determine a vexatious request and a repeated/similar request
- the requirements for, and when to issue, a refusal notice
- an overview of the key Exemptions, the distinction between Qualified and Absolute Exemptions and the Public Interest Test
- how to handle complaints with reference to the Section 45 Code of Practice, timescales and an overview of the appeals process
- the Information Commissioner's powers of enforcement, his approach to enforcement and criminal offences

Part 2 - FOI Applying the Exemptions

- an overview of how to apply the exemptions including the difference between class based exemptions and prejudice based exemptions, the prejudice test, the likelihood test and applying the public interest test
- how to apply exemptions to the duty to confirm or deny

- a brief overview of all the exemptions
- a more detailed analysis of the following key exemptions with reference to guidance from the Information Commissioner's Office ('ICO') and decisions by the ICO, Information Tribunal ('IT') and the courts:
 - Section 21 – Information accessible by other means
 - Section 22 – Information intended for future publication
 - Section 30 – Investigations and proceedings conducted by public authorities
 - Section 31 – Law enforcement
 - Section 35 – Formulation of government policy
 - Section 36 – Prejudice to effective conduct of public affairs
 - Section 38 – Health and safety
 - Section 40 – Personal information
 - Section 41 – Information provided in confidence
 - Section 42 – Legal professional privilege
 - Section 43 – Commercial interests
 - Section 44 – Prohibitions on disclosure
- confidentiality, procurement and contracts including latest guidance and redactions to the publication of spending information, tenders and contracts
- dealing with the ICO, including making effective submissions in relation to complaints and investigations
- appeals to the IT, the procedure, timescales and what to expect

Part 3 - FOI and Data Protection

- determining what is personal data and sensitive personal data in the context of FOI requests, including relevant guidance from the ICO
- determining whether a request should be dealt with under the DPA, FOIA or EIR
- interpretation and practical application of Section 40, FOIA and Regulation 13, EIR including
 - an overview of the Data Protection Principles
 - the First Data Protection principle in detail
 - conditions for processing personal data and sensitive personal data
 - section 10 notices
 - subject access rights and exemptions
 - duty to confirm or deny
- the legal principles governing access to third party personal data
- disclosing staff information to outside third parties
- analysing the practical implications of key decisions of the ICO and IT

Part 4 - Understanding the Environmental Information Regulations

- definition and scope of environmental information and examples with reference to ICO and IT decisions
- which organisations EIR applies to: application in the public and private sectors, Defra Guidance and IT decisions
- boundaries with FOI and similarities and differences between FOI and EIR
- EIR exceptions and how they compare with FOIA exemptions, consideration of each exception with reference to relevant ICO and IT decisions and the application of the adverse effect test
- requests involving personal data
- decisions of the ICO and IT including *Markinson*, *Kirkcaldie* and *Lord Baker*
- charging: when charges can and cannot be made and how they are calculated
- best practice: EIR requests and the duty to disseminate