

**GUIDANCE FOR INFORMATION MANAGERS ON  
PROVISION OF ASSISTANCE TO PERSONS WITH  
DISABILITIES UNDER THE FREEDOM OF  
INFORMATION (FOI) LAW, 2007 & FOI  
REGULATIONS, 2008.**

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## **2. INTRODUCTION:**

These Guidelines have been prepared for use by Information Managers and other staff who are fulfilling the requirements of the Cayman Island Freedom of Information Law 2007, and Regulations, 2008. The Guidelines are based on the expectation that persons with a disability should receive reasonable assistance in exercising their rights under the FOI Law.

The scope of the Guidelines covers the needs of persons with a disability in exercising their rights of access to records held by public authorities. Section 49(1) of the Freedom of Information Law 2007 provides that Information Managers shall assist individuals seeking access to records and shall pay special attention to people with relevant disabilities. The FOI Regulations 2008 s.21 (i) state that Information Managers shall assist persons who have limited ability to read or write English or with any mental or physical disability. Wider issues affecting persons with a disability, such as physical access to buildings etc., are therefore not within the scope of the Guidelines.

The Guidelines were prepared under the guidance of the FOI Unit, Cabinet Office, Cayman Islands Government. Accordingly, any proposals to change this document should be addressed to the FOI Unit.

## **2.1 Background – Disability considerations**

The purpose of this section is to put disability considerations into a Cayman Islands context and thereby assist staff tasked with implementing the FOI Law and Regulations to make suitable decisions and to act appropriately.

Available data indicates that the main disability considerations that can be expected in the Cayman Islands are those associated with:

- Mental health issues;
- Paralysis, through injury or illness;
- Visual impairment (partial to full);
- Hearing impairment ( partial to full); and
- Illiteracy.

Internationally, research shows that 10 - 20% of any population can be categorised as disabled; that disabilities are more prevalent in older people; and that the proportion of disabilities increases as a population ages. There is no specifically comparable disability data available for the Cayman Islands; however census information suggests the local trends are not likely to be too dissimilar to the international trends. It is consequently likely that a reasonably significant number (i.e. 10-20%) of requesters under the FOI Law could be persons with disabilities.

### **3. DESIGNATION OF OFFICERS TO PROVIDE A SERVICE TO REQUESTERS WITH A DISABILITY**

The Freedom of Information Law provides that an Information Manager is the person designated to deal directly with requesters with a disability. Information Managers therefore have to be able to ensure that requestors with a disability are able to fully exercise their access rights under the FOI Law. This function should be carried out as an integral part of the duties of the Information Manager and should be executed on the basis that professionalism of the service is applied equally to all requesters.

Heads of a public authority should make arrangements to ensure that the service is provided at all times, i.e. that any absences of an Information Manager a nomination designate is required to ensure continuity of the service. Public authorities could achieve this through any of the following means:

- assigning the task to the Records Officer;

- assigning the task to the officer in the organisation whose existing duties most closely relate to it, or
- putting other arrangements in place that suit the requirements of the requester and the responsibilities of the public authority.

In any event, heads of public authorities should ensure that Information Managers are familiarised with basic disability awareness. Such familiarisation should ensure that officers are in a position to have due regard to the extent and categories of disability of requesters.

Public authorities should also be aware of and have regard to existing Guidance under, and the provisions of, the FOI Law and Regulations which set out the circumstances when it is appropriate to release records relating to personal information of a third party with appropriate authorization.

#### **4. PROVISION OF SERVICES TO REQUESTERS WITH A DISABILITY:**

The task of the Information Manager is to ensure that requesters with a disability are provided with access rights consistent with the provisions of the FOI Law. In fulfilling this task, officers should take a pragmatic approach and apply common sense to situations which are covered by formal mechanisms of the FOI Law. It is important to document the wishes/ requirements of the disabled person and the approach taken by the Authority to satisfy these requirements.

This level of service could be maximised by:

1. **Accepting oral requests from requesters, who are unable to read, print and/or write due to their disability.**

In receiving oral requests, the Information Manager should make a verbatim record of the request, to be read back to and agreed by the requester. This would make such requests consistent with the FOI Law which requires that FOI requests are in writing. As email requests which are by their nature unsigned are acceptable as valid requests, the technical issue as to whether the oral recorded request needs to be signed does not arise. If the request is for personal information, issues of identity and authorization arise.

2. **Accepting email requests from requesters who are unable to write due to their disability.**

The main issues here would be of identity and security, as it has been established that receipt of email requests is valid under the FOI Law. Public authorities should largely be guided by the wishes of the requester in this regard, as he or she would be better placed to advise on the security of a home email destination (including issues such as family access etc.) than the public authority.

3. **Enabling the requester to inspect or have records explained to him or her.**

There may be cases where a requester with a reading disability who has sought access to records does not want such access to be via a third party, but is prepared to have the content of the records explained to him or her by the public authority. In such cases, the public authority should ensure that, with due regard to disability awareness issues, the officer or Information Manager most familiar with the records provides the service.

4. **Accepting requests from a third party on behalf of a requester with a disability.**

Subject to the issues of identity and authorization there is no difficulty under the FOI Law in public authorities releasing these records to third parties, including the personal records of the requester. Release of records via third parties should only be considered when the public authority is satisfied that the requester does not wish to have direct access to the records or to have them explained to him or her by the public authority.

## **Format of records**

The approved format for access to records is outlined in the FOI law section 10(1). These include inspection, copies, visual images and audio. The applicant may also be provided with a transcript of the data or the words or sounds and images recorded in the record. It may not always be possible to provide an appropriate standard of service directly to the requester if limited to these formats, for example when records sought by a requester cannot be understood by him or her due to the particular nature of their disability. In this context, public authorities could consider appropriate technology or translation (e.g. conversion to Braille) when updating or replacing existing Information Technology apparatus as circumstances and resources allow. Provision of such technology where relevant and appropriate should address the requirement of public authorities under the FOI Law that they provide requesters with records in any form specified by the requester.

The FOI law in section.13 outlines that Fees can be charged for reproduction, preparing and communicating the information as long as they do not exceed the actual cost to the public authority. Recovery of actual expenses is therefore provided for under the FOI Law, but so is the discretion to waive fees. Public authorities can therefore consider waiving fees as set out in FOI Law and Regulations.

There will be some cases where the issue of understanding records cannot be dealt with by technology or practical assistance alone. In these exceptional cases, public authorities may wish to consider making contact with voluntary and other services which can provide assistance to requesters with particular disabilities in such matters. In these circumstances, the Information Manager should in the first instance seek the assistance of the relevant Cayman Island Government agency with the skills to deal with the disability. It is most likely that contact with the agency would be through the Information Managers network and contact list.

Public authorities should not refuse access to a record under the FOI Laws in the case of a requester with a disability until all reasonable steps have been taken to assist the requester, including consideration of technical and practical solutions. It is a matter for each public authority to consider whether and when such efforts would be appropriate, but should always bear in mind the importance of providing a level of service to persons with a disability at least equivalent to that provided to other requesters. At a general level, the service provided by public authorities to persons with a disability could be considerably improved in the following ways:

- Production of key documents, (i.e. publishable documents most frequently sought from public authorities), in video or audio format, with subtitling as appropriate. Use of existing reformatting technology should be considered, i.e. in-house technology that facilitates translation of material into different formats thereby removing the need to source such translation externally.
- Production of key records in Braille or in an appropriate voice translation medium. Again, use of existing reformatting technology is suggested.

## **5. IDENTITY OF REQUESTERS SEEKING PERSONAL INFORMATION:**

This section of the Guidelines relates to the treatment of requests for one's own personal records. In this regard, there should be no difference between the service provided to requesters with a disability and that provided to other requesters. The FOI Law requires public authorities to satisfy themselves of the identity of requesters for personal information.

### **5.1 Establishing identity**

The FOI Law does not specify any particular form of identification which public authorities should consider as satisfactory for the purposes of positively identifying requesters for personal information. This must be determined by the individual public authority.

In general, public authorities should have regard to forms of identification convenient for the requester provided they provide sufficient proof of identity.

### **5.2 Release of personal information**

Once the identity of the requester has been established, the public authority must then decide whether it would be appropriate to release the requested records. In doing this, the public authority should consider the following:

#### **1. Are the records appropriate for release?**

The FOI Law provides that requested records held by public authorities will be released unless they contain exempt material. Therefore, Information Managers must consider whether requested records, including personal records, include information that may be exempt before making any decision to release them. It should be noted that a person may make a request for their own personal information and the exemption for unreasonable disclosure of personal information does not apply where



the applicant is the person to whose affairs the record relates.

2. **Does the nature of the disability require additional steps to be taken other than sending the records to the requester by post?**

If so, then the issues of maximising the service to requesters with a disability should be considered, including email or phone conversation. If not, no additional action is required.

3. **Would release of the records be harmful to the person in some way (i.e. as specified in the FOI Law –physical or mental health or safety s.24)?**

When considering this issue, the public authority should have the best interests of the person in mind at all times, and should approach it on the basis that the likelihood of such harm occurring is no more likely in most cases for requesters with a disability than it is for the majority of requesters. Before making any decision to withhold records from a requester for this reason, the public authority should consult with as wide a range of sources as is reasonably possible, such as a family member, trusted friend, carer, health professional, legal representative.

4. **Intermittent or temporary incapacity**

In the case of a person who suffers intermittent incapacity, in most cases of an intellectual nature, but can normally manage his or her own affairs, it is unlikely that records would be released to a third party during such periods of incapacity unless the Information Manager has strong grounds for assuming that is not an unreasonable disclosure of the persons information or it is otherwise in the public interest.

5. **Is the person in a position to understand the records?**

If the public authority has concerns of this nature, steps should be taken to ensure that released records are properly explained to the requester. This could be done by having an officer familiar with the records or a third party nominated by the requester explain them to ensure that there is no potentially upsetting misunderstanding of the content.

## **6 CONSENT OF REQUESTERS TO RELEASE OF PERSONAL INFORMATION TO THIRD PARTIES**

This section of the Guidelines relates to the issue of authorization of persons with a disability to personal information being released to third parties. The terms of the FOI Law oblige public authorities to satisfy themselves of the authorization of requesters to the release of personal information sought by them to a third party. This section should only be referred to where the requester, due to the nature of their disability, is not in a position to provide written or oral authorization to release of personal information relating to him or herself to third parties.

### **6.1 Consent/Authorization to release of information to third parties**

As with identification of requesters for personal information, the FOI Law leaves to the public authority to determine the particular form of authorization which they consider as satisfactory proof of consent to release personal information relating to requesters with a disability to third parties. Public authorities should take a pragmatic approach in considering this issue and be sensitive to the reality that some aspects of particular requests will require dealing with the requester him or herself directly, while with other aspects of the same requests contact will be with the third party by themselves or along with the requester.

### **6.2 Is consent/authorization informed?**

In examining these issues, public authorities should firstly satisfy themselves that the requester is in a position to provide informed consent. This would be an issue of judgement for the public authority, but some of the factors which public authorities should consider on this issue are:

- **Previous dealings with the person.**

If the public authority, through FOI or otherwise, has had prior dealings with the person, the nature of such dealings may provide grounds for the authority to decide whether the person was in a position to provide informed consent/authorization.

- **Previous dealings with a nominated third party.**

If the authority has had prior dealings with a nominated third party on behalf of the person (such as a family member, trusted friend, carer, health professional, legal representative), the nature of such dealings may also provide grounds for the

authority to decide whether the person was in a position to provide informed consent/authorization.

- **The nature of records held on the person.**

There may be material on the person's file which would assist the authority in deciding if he or she was in a position to provide informed consent/authorization to release such material to third parties.

- **The nature of the disability.**

A critical factor is whether the disability is temporary or continuing. Requests from people with intermittent or temporary disability would be treated as outlined in 5.2 above, with Information Managers having regard to the best interests of the person to whom the records relate. In cases where a disability is continuing, it is more likely that release to third parties may be in the person's best interests where such third parties are caring for the person on an ongoing basis. However, this may not always be the case.

*Decision makers must treat each request on its merits on a case by case basis.*

### **6.3 Is consent/authorization valid?**

Once a public authority has established that the person is in a position to give informed consent/authorization, the next step is to decide if such consent/authorization is valid. Below are listed some forms of consent/authorization which public authorities might find useful for the purpose of establishing the validity of consent for all requesters:

- a power of attorney;
- a court order;
- written authority by a next of kin to whom the information relates, to apply for and gain access to the information;
- any other form of consent acceptable to the public authority.

If public authorities have any concerns about the validity of consent/authorization given, they should take all reasonable steps to contact the person on the issue, either directly or via an intermediary nominated by him or her. If they are unable to contact the person, they should

assume that the person does not consent/grant authorization as the FOI Law provides that one's personal information will not be revealed to third parties, unless it is not an unreasonable disclosure of personal information or there are public interest grounds for releasing the records which override the right to privacy of the person.

#### **6.4 Provision of records to third parties with consent**

Once consent/authorization has been established, the requested records should be released forthwith to the third party nominated by the requester.

### **7 Conclusion**

Public Authorities have to be prepared to deal with all requestors under the FOI Law to make decisions on the provision of information in a timely fashion. Persons with disabilities may have special needs that Information Managers need to be prepared to address in responding appropriately under the FOI law.

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