



GENERAL GUIDANCE FOR PUBLIC AUTHORITY STAFF ON FREEDOM OF INFORMATION IN THE CAYMAN ISLANDS

What is Freedom of Information?

The Freedom of Information (FOI) Law was passed on 31st August 2007 and came into full effect on 5th January 2009. The FOI Law gives any person, of any nationality, anywhere in the world the right to access information held by any public authority in the Cayman Islands Government, subject to exemptions outlined in Part III. The FOI Law promotes greater accountability and transparency in the workings of Government and encourages public participation in national decision-making.

Who does FOI apply to?

The FOI Law applies to all public authorities, that is, ministries, portfolios, departments, statutory authorities and government companies (either wholly owned or with over 50% ownership). The Law may be extended by Order of the Governor to private companies that carry out a service that is important to the welfare of the Caymanian Society and also to non-governmental organisations that receive government appropriations.

What are the main features of the Law?

The FOI Law allows any individual or company to seek access to information held by public authorities. The Law also provides applicants with a right of access to personal information about themselves. Information is required to be released subject to certain exemptions and exclusions outlined in the law. The Law applies to information held in any form and includes paper files, electronic documents, maps, photographs, sound and video recordings. The Law also applies to all records held by the Cayman Islands Government irrespective of their age.

A person does not have to give a reason for their request, and need not use their real name. All persons have equal right of access. If a record can be released, it can be released to anyone, regardless of who they are and why they want it. The burden of proof to show why a record is exempt or excluded is on the public authority, and all applicants must receive a detailed explanation of the Information Manager's decision. Disclosure is the general rule, not the exception.

In addition to providing a right to request information, FOI also requires public authorities to proactively publish information in the form of a "publication scheme." The schemes must be gazetted annually and describe the records that your public authority holds and how to access information.

The FOI Law does not require the creation of a document, but it may require the collation of information, and records management is key to the efficient provision of information. All public officials are encouraged to create accurate records and ensure they can be retrieved quickly. All public authorities must abide by the National Archive and Public Records Law and the Code of Practice on Records Management, which sets out the records management standards.

Lastly, the FOI Law is enforced by the Information Commissioner, who has powers to ensure compliance with the provisions, publicise the requirements of the Law and rights of individuals, and determine appeals made by applicants unhappy with the decisions of public authorities.

What is a FOI request? How do I handle it?

Each public authority must designate an Information Manager (IM) to respond to requests. Every written request for information received by post, e-mail, fax or hand delivery is an FOI request, unless it is for information that is already in the public domain, available for purchase, or open to access by the public pursuant to another law or administrative procedures. Information previously made generally available to the public continues as normal under FOI.

Under the Law, each public authority must designate an Information Manager to respond to FOI requests. However, any member of staff may receive a request in their daily work and must identify requests and direct them to the relevant IM or IM designate within two calendar days.

An FOI request must be in writing and include the applicant's name and address (either e-mail or postal), a description of the information they are seeking, and the format in which they would like to receive the record(s). An applicant is not required to indicate that their request falls under FOI or address the request to the IM.

In most cases, a decision must be made on a request within 30 calendar days of receipt. Fees may be charged only to cover costs of reproducing, formatting or communicating information, as outlined in the FOI (General) Regulations.

Do I now need to retain all information held by my public authority?

The Cayman Islands National Archive (CINA) authorises disposal of records of public authorities through the use of a disposal schedule. A disposal schedule explains how long to keep records and what happens to them at the end of that period. Both operational and administrative records must be maintained in accordance with an agreed disposal schedule.

In general, information to be retained is that which is relevant to the business conducted by the public authority, information which the community expects will be retained, and information important to legal and accountability requirements.

Once information has been requested it is a criminal offence to alter, deface, block, erase, destroy or conceal that information in order to prevent disclosure, and a person is liable on summary conviction to a fine of CI\$100,000.00 and a 6 month jail sentence or both.

On what basis can a request be refused?

In order for the Government to conduct business there are specific types of records which would not be in the public interest to release and exempted from the FOI Law. There are also certain offices and classes of information which are specifically excluded from the Law.

Examples of exclusions:

- Documents protected under section 50 of the Cayman Islands Monetary Authority Law;
- Information related to the judicial functions of a court and the holder of a judicial office; and
- Records held by the security or intelligence services in relation to their strategic or operational intelligence-gathering activities.

Examples of exemptions:

- Records affecting security, defence or international relations;
- Information subject to legal professional privilege;
- Information that will reveal deliberative processes (including preparations for Cabinet);
- Information that would have a substantial adverse effect on the national economy;
- Commercially sensitive information which would be diminished in value by its release; and
- Unreasonable disclosure of personal information.

Some of these exemptions are subject to a “public interest test.” To apply this test, the IM must consider whether an exempt document should nevertheless be released in the public interest, as the factors favouring disclosure are equal to or outweigh the factors favouring non-disclosure.

Finally, an IM may refuse to comply with a request if it is vexatious, if the public authority recently complied with a substantially similar request from the same person, if full compliance would unreasonably divert its resources, or if the information is already in the public domain.

Can an applicant appeal against a decision to not provide information?

An applicant who is dissatisfied with a response may request an internal review of the decision by the authority’s Chief Officer or Minister for certain refusals outlined in the Law. Once all internal review options have been exhausted, the applicant may further appeal to the Information Commissioner, who is an independent public official, for a finding which is binding on the parties to whom it is addressed. The Information Commissioner can review, investigate and rule on appeals, recommend training for the authority’s staff or suggest the manner in which records are stored, managed and destroyed be changed. Matters which would constitute a criminal offence can be referred to the appropriate authorities by the Information Commissioner.

What are some tips for public officials?

1. Direct FOI requests to your Information Manager as soon as possible and assist members of the public who want to make a request by identifying the responsible officer.
2. Do not destroy records unless authorised to do so under your public authority’s disposal schedule.
3. Get more information by logging on to the FOI Unit’s website at www.foi.gov.ky.