



National Lottery
Commission

Freedom of Information Policy

Policy

February 2010

Contents

1. Introduction	2
2. Requests under Fol Act	2
3. Definition of Information	4
4. Withholding information and exemptions.....	4
5. Cost limitations to requests and fees	5
6. Other Guidance and codes of practice.....	6
7. Annex 1- DCMS Fol Handling protocol.....	7
8. Annex 2 - Camelot Fol protocol.....	12
9 Annex 3 - Exemptions under the Fol Act.....	17

Freedom of Information Policy

1. Introduction

- 1.1 The National Lottery Commission (Commission) is a public authority under the terms of the Freedom of Information (Fol) Act 2000.
- 1.2 From 1 January 2005 the Fol Act gives individuals fully enforceable rights of access to information held by public authorities. However, these rights are not absolute, there is a balance between the rights of the individual to request and be given information, and aspects of the delivery of good government. This balance is interpreted through the application of exemptions and procedural limitations.
- 1.3 The Act gives the individuals the right to request information and be told whether the information is held, and if that is the case to have the information, communicated to them, except where under the terms of the Act the information is considered exempt.
- 1.4 The Commission has put in place the following to ensure compliance with the Fol Act:
 - Training for all staff so they can recognise a request for information under the Fol Act, and know where to refer the request so it can be recorded and responded to within the terms of the Act. This training will be repeated regularly and the Commission will ensure new staff have adequate training.
 - Procedures for recording and monitoring progress on requests under the Fol Act and for maintaining information on time taken to respond to requests and producing statistics.
 - Clear and appropriate decision making structures and arrangements for internal review of decisions. These decisions will be made at an appropriate level.
 - Procedures for consulting on releasing or withholding information with organisations which have produced information which is held by the Commission.
- 1.5 The Commission will continue to be proactive in making information about our work readily available. This will be done by producing a Publication Scheme and making this available on our website. We will regularly update our website with information of interest to all stakeholders, and from time to time by publishing other information.

2. Requests under the Fol Act

- 2.1 The Commission will recognise Fol requests, and treat them accordingly where:
 - The request is made in English or Welsh languages, we will consider whether requests in other languages will be treated on a case-by-case basis. We may ask that the request be reframed in English.

- The request is made in writing - includes email and faxes.
 - Gives the name and return address (including an email address) of the requestor. We recognise the right of people outside the UK to make requests and receive information.
 - Adequately describes the information requested.
- 2.2 The Freedom of Information Officer will maintain a system to record and respond to Fol requests. This system will be used for recording and reporting on performance in meeting statutory timescales to respond to requests.
- 2.3 The Freedom of Information Officer on receipt of an Fol request will identify the directorate most likely to hold the information requested and make the relevant Director aware. The directorate will be asked to search electronic and paper filing systems for the information and supply copies of that information to the Freedom of Information Officer within an agreed period of time.
- 2.4 Having considered the information the Freedom of Information Officer will discuss with the Director owning the information about the handling of the request. The final decision will be made by the relevant Director. Matters for consideration may include:
- The need to consult DCMS or Camelot or any other organisations if all or any of the information originates from those organisations and is considered sensitive. It will be agreed how to approach the organisation and the content of the communication for example should the identity of the requestor be revealed or withheld. It should be noted that there are protocols in place with DCMS and Camelot, which set out agreements on the principles and timetable for consultation. These are attached at Annex 1 and 2.
 - Whether the Commission should take legal advice on the request and on matters such as applying exemptions and the public interest test. If it is agreed that legal advice is required relevant Director will seek that advice.
- 2.5 The Director of the department where the requested information lies will be responsible for making the decision on whether information should be released or withheld and for deciding on the form of the response. The relevant Director will consult with the Freedom of Information Officer, colleagues within the Commission, organisations who have produced information held by the Commission, and if necessary take other advice before making a decision.
- 2.6 The Freedom of Information Officer will keep the Senior Management Team informed of progress on responding to Fol requests.
- 2.7 An internal review procedure is in place for applicants unhappy with the response to their request. The review will be carried out at an appropriate level in the organisation and within timescales specified in the Act. See Fol Internal Review Policy for further information.
- 2.8 Requests for information will be responded to within 20 working days. The first day will be the day after the request is received. Where the decision is taken to release the information this will be done within the 20-day limit.

- 2.9 The Commission will not respond to repeated requests for information or requests considered vexatious. The judgement on whether requests are repeated or vexatious will be made on the basis of the request and not on the requestor.

3. Definition of information

- 3.1 All information held by the Commission is covered by the Act whether it is held electronically, on paper, or is an audio or video recording. Hand written notes on the face of paper documents or on post-it notes attached to documents will be considered as information releasable under the Act.
- 3.2 Information archived either in hard copy or electronic form is also recognised as information held by the Commission. The Commission will ensure any arrangements made to hold archived documents off-site and to retrieve documents can be made to meet the 20-day deadline.
- 3.3 The FoI Act gives individual the right to information, not to documents. The relevant Director will take the decision on which form the information should be provided, and will consult with the Freedom of Information Officer, colleagues and others as necessary before making a decision.
- 3.4 Where information has been deleted from an electronic record prior to a request being made the Freedom of Information Officer will ask the IT Manager to check that the information has been fully deleted from the IT network and is no longer recoverable, either from the system or from back up discs.
- 3.5 The Commission recognise that deleting information after a request has been made under the FoI Act is a criminal offence. To delete information in this way will also be considered to be gross misconduct under the Commission discipline policy.
- 3.6 Any information produced by a third party but held by the Commission will be covered by the Act.
- 3.7 The Commission has arrangements in place to consult with DCMS and Camelot should information requested under the Act and held by the Commission have been produced by them or derived from information produced by those organisations. Copies of the protocol documents are at Annex 1 and 2.

4. Withholding information and exemptions

- 4.1 The Act allows for information to be withheld if an exemption specified by the Act applies to the information at the time the request is made. A full list of exemptions is given at Annex 3. This section gives brief details of exemptions which might apply to information held by the Commission.
- 4.2 Exemptions in the Act are either absolute or qualified:
- Absolute exemptions – there is no obligation under the Act to consider the request for information further.

- Qualified exemptions - are subject to the public interest test. It is not justified to withhold the information unless the balance of the public interest test comes down against disclosure.

4.3 Examples of absolute exemptions which may apply to information held by the Commission are:

- Information accessible by other means (Section 21).
- Personal information (personal information as defined by the Data Protection Act) (Section 40).
- Information provided in confidence (Section 41).

4.4 Examples of qualified exemptions which may apply to information held by the Commission are:

- Prejudice to the effective conduct of public affairs (Section 36).
- Commercial interests (Section 43).
- Information intended for future publication (Section 22).

4.5 The public interest test is applied where a qualified exemption may apply. The starting point in considering the balance of public interest is that there is a general public interest in disclosure and there is no general public interest in the information being withheld. The public interest is not a fixed concept and is likely to change over time. Therefore a decision to withhold information at one point may not be applicable at some time in the future. The public interest test must be applied on each occasion a request is made regardless of whether a decision has previously been made.

4.6 Where the application of a 536 exemption is being considered the Chief Executive is designated as the Qualified Person in the Commission.

4.7 The Department of Constitutional Affairs has issued detailed guidance on exemptions and using exemptions. Copies of the guidance are available at www.dca.gov.uk/foi or from the Director of Resources.

5. Cost limitations to requests and fees

The Act allows for a fee to be charged where the cost of time taken in locating, sorting and editing information amounts to more than £450. The Commission will consider each case individually.

The Commission will not normally charge for making information available under the Fol Act, however the Director of Resources may recover the cost of disbursements (printing, photocopying and postage).

6. Other guidance and Codes of Practice

This policy is intended as a brief guide to the Fol Act and the arrangements made in the Commission to comply with the legislation. Further information and guidance is available from the following sources:

- The Freedom of Information Officer
- www.justice.gov.uk/guidance/freedom-of-information.htm
- www.ico.gov.uk

This policy has been prepared to comply with the Codes of Practice issued by the Lord Chancellor to fulfil his duty under Section 45 of the Act. This policy will be reviewed periodically against the Codes of Practices to ensure the Commission continues to follow best practice.

Date of next review: February 2012

Keisha Aimuwu
Secretariat Manager

DCMS PROTOCOL**FOI REQUEST- HANDLING PROTOCOL****THIS PROTOCOL WILL APPLY TO THE HANDLING OF REQUESTS FOR INFORMATION MADE UNDER THE FREEDOM OF INFORMATION ACT 2000 (“FOI Act”)**

BETWEEN The Department for Culture, Media and Sport (“DCMS”) and the National Lottery Commission (“the NDPB”)

In adopting this protocol, both DCMS and the NDPB recognize that there may be a need for them to communicate sensitive information to each other, to facilitate the conduct of their affairs. They also recognize that it is in the public interest for them to ensure that their officials and stakeholders can communicate freely and frankly with each other regarding policy and other issues, in accordance with the FOI Act.

A. Appointment of Freedom of Information (“FOI”) Champion

- 1) The NDPB shall appoint an FOI champion (“the FOI Champion”) who will be responsible for promoting awareness and information about FOI within the NDPB. The Champion and the Chief Executive (or equivalent officer) will be responsible for ensuring that the NDPB implements the FOI Act and complies with its obligations under that Act.
- 2) The FOI Champion will either be, or will appoint an individual to be, the main point of contact for all queries about FOI requests from DCMS.

B. Compliance with and Monitoring of Statutory Obligations

- 3) The NDPB will establish procedures for the processing and monitoring of FOI requests in accordance with its statutory obligations and having regard to:
 - a. any Code of Practice issued from time to time by the Secretary of State or Lord Chancellor;
 - b. any guidance issued from time to time by the Department for Constitutional Affairs (“DCA”), DCMS or the Information Commissioner.
- 4) The NDPB will provide appropriate training in FOI and the FOI Act for its staff.

C. Shared and Sensitive Information

- 5) The following provisions are intended to ensure that there is mutual confidence between DCMS and its NDPBs that information regarded as sensitive by either organisation will be carefully considered before it is disclosed as the result of an FOI request.
- (a) Where information is shared between DCMS and the NDPB, the body which shares the information will, where reasonably practicable, make it clear at the time it is shared whether the information is considered by that body to be sensitive.
- 6) ***Consultation about Requests for Shared and/or Sensitive Information***
- (b) If a request is made to DCMS for the disclosure of information which was received from the NDPB and which might be regarded as sensitive by the NDPB, DCMS will, where reasonably practicable, consult the NDPB before disclosing information in response to the request.
- (c) If a request is made to the NDPB for the disclosure of information which was received from DCMS and which might be regarded as sensitive by DCMS, the NDPB will, where reasonably practicable, consult DCMS before disclosing information in response to the request.
- (d) If it appears that the disclosure of any other material which is the subject of an FOI request to DCMS might be regarded as sensitive by the NDPB, DCMS will, where reasonably practicable, consult the NDPB before complying with the request.
- (e) If it appears that the disclosure of any other material which is the subject of an FOI request to the NDPB might be regarded as sensitive by DCMS, the NDPB will, where reasonably practicable, consult DCMS before complying with the request.

Procedure for Consultation

- (f) In any case where consultation is required, the recipient of the request should endeavour to pass the request and any supplementary information available at that date to the relevant division of DCMS or the NDPB within 3 working days of receipt of the request. Full details of what it is proposed to disclose in response to the request should be passed to DCMS or the NDPB as soon as possible thereafter, and in any event within 10 working days of the request being made.
- (g) DCMS or the NDPB, where appropriate, will aim to respond to the consultation at least 5 working days before the expiration of the statutory deadline for responding to the request. If DCMS or the NDPB considers that any or all of the information sought should be withheld, a full explanation will be given, including stating which exemption(s) is/are thought to apply and, if relevant, why the balance of the public interest test (as described in section 2(2)(b) of the FOI Act) falls in favour of retention. If exemptions are considered to apply, the response to consultation will be channelled through the Information Management Unit (if DCMS) or the equivalent person/team in the NDPB.

DCA Clearing House Consultation Procedure

- (h) Where the NDPB considers that any FOI request that it receives falls into the description of requests listed in Schedule 1, DCMS will expect the NDPB, within 3 working days of the request, to refer the request to DCMS' Information Management Unit, copied to the DCMS FOI Champion. DCMS will then liaise with the DCA Clearing House for guidance on how to respond to the request. DCMS will communicate any resulting guidance to the NDPB and it will be for the NDPB to consider whether to follow the DCA guidance.

D. Section 36 Exemption Handling

- 7) The Secretary of State has authorised the Chief Executive of the NDPB to act as the “qualified person” under section 36(5) (o) (iii) of the FOI Act.

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- 8) DCMS expects that, where the “qualified person” considers that information should be withheld under section 36(2), that decision will be copied to DCMS’ FOI Champion at the same time that the applicant is made aware of the decision.

December 2004

Schedule 1

REQUESTS TO BE REFERRED TO THE DCA CLEARING HOUSE IN
ACCORDANCE WITH THE DCA GUIDANCE

- Where the application of FOI, EIRs or DP is complex and/or technically difficult;
- Requests relating to high profile issues, whether current or historical;
- Requests for, or relating to, Ministerial Diaries;
- Requests for, or relating to, Gateway reviews;
- Requests for shared information that is held relating to the Efficiency Programme (or Gershon Review);
- Cases where information less than 30 years old is held by the National Archives and there may be a dispute between the Department and TNA;
- Cases relating to communications with Her Majesty, other members of the Royal Family or with the Royal Household;
- Requests relating to the conferring of Honours;
- Requests for information that were previously disallowed under the Code of Practice on Access to Government Information;
- Cases relating to the work of Private Offices;
- All cases relating to Cabinet e.g. Cabinet Committee papers, minutes and meeting dates;
- Anything relating to the current Prime Minister;
- Anything relating to Ministers e.g. Ministerial financial interests, diaries and propriety issues related to the Ministerial Code;
- All cases intrinsic to the operation of collective responsibility e.g. inter-Ministerial correspondence and notes of meetings between Ministers;
- Queries relating to Select Committee evidence and appearances that is not already in the public domain;
- Round robin requests;
- Cases that obviously involve cross Whitehall issues;
- Cases which might lead to the use of Ministerial Vetos;
- Cases which might lead to the issue of a certificate under s.23 FOI Act;
- Cases which might lead to the issue of a certificate under s.24 FOI Act;
- Internal reviews of Departmental decisions to withhold information;
- Appeals to the Information Commissioner; and
- Appeals to the Information Tribunal.

PROTOCOL IN RELATION TO FREEDOM OF INFORMATION

1. STATUS AND PURPOSE OF THE PROTOCOL

1.1 This Protocol is designed to assist in the practical application of the obligations imposed under the Licence to be granted to Camelot Group plc whose registered office is at Tolpits Lane, Watford, Hertfordshire WD18 9RN (the *Licensee*) by the National Lottery Commission of 101, Wigmore Street, London W1U 1QU (the *Commission*) (together the *Parties*) pursuant to the Enabling Agreement between the Parties dated 30 August 2007, during the term of the Enabling Agreement and the Licence (the *Term*) in relation to Conditions 20.8 to 20.12 inclusive, of the Licence.

1.2 This Protocol does not supersede, replace, dilute, act as a variation of, or, unless and to the extent otherwise indicated, waiver of the rights and obligations of the Parties provided under or pursuant to the Licence.

1.3 This Protocol is not legally binding, nor does it impose any legal obligations, but should be seen as a mechanism for improving the relationship and efficiency of operations between the Licensee and the Commission during the Term.

1.4 The Parties recognise that this Protocol may develop during the Term and agree that they shall hold a minimum of one meeting per calendar year to discuss the operation of this Protocol with a view to agreeing such changes as may be necessary from time to time.

1.5 This Protocol may be varied at any time with the prior consent of the Parties.

1.6 Clause 18 of the Enabling Agreement shall have effect in relation to this Protocol.

2. DEFINITIONS

2.1 Capitalised terms used within this Protocol but not defined shall have the meaning given within the Licence.

3. INTERPRETATION

3.1 Subject to Paragraph 3.2, Condition 2 of the Licence (which provides for Interpretation) shall apply to this Protocol.

3.2 In this Protocol, references to Paragraphs and Sub-Paragraphs shall be construed as references to the Paragraphs and Sub-Paragraphs of this Protocol.

3.3 All actions, if any, which are performed by a Party in connection with this Protocol shall be performed at the Party's own cost unless expressly specified to the contrary in this Protocol.

4. PROCEDURE FOR CONSULTATION

4.1 If the Commission receives a Request for Information relating to information it received or obtained from the Licensee, or which relates to the Licensee, it will aim

to consult with the Licensee and take its comments into account before disclosing the relevant information in response to the Request for Information.

4.2 If the Commission is notified of a Request for Information made to a third party public authority for the disclosure of information that originated from the Licensee, or which relates to the Licensee, it will aim to request (and in the case of DCMS and the Gambling Commission and, if possible, any other third party public authority, it will aim to facilitate) that such third party public authority consults the Licensee about the Request for Information if such consultation has not already been initiated.

4.3 For the purpose of any consultation under Paragraph 4.1, the Commission will aim to provide details of the Request for Information and any relevant supplementary information, including where appropriate any information the Commission intends to disclose, to the Licensee.

4.4 When the Licensee is consulted by the Commission about a Request for Information, the Licensee will reply as soon as reasonably practicable and in any event it will reply within five Business Days.

5. PROCEDURE FOR LICENSEE PROVISION OF INFORMATION HELD ON BEHALF OF COMMISSION

5.1 If the Commission receives a Request for Information relating to information it considers is being held by the Licensee or any Licensee Subcontractor, Series Subcontractor or Sub Series Subcontractor on its behalf, and which the Commission does not hold itself, it will aim to do the following:

- (a) provide details of the Request for Information and any relevant supplementary information to the Licensee;
- (b) identify the relevant information it considers is being held by the Licensee or any Licensee Subcontractor, Series Subcontractor or Sub Series Subcontractor on its behalf; and
- (c) request provision of that information by the Licensee.

5.2 Where the Licensee receives notification from the Commission that it or any Licensee Subcontractor, Series Subcontractor or Sub Series Subcontractor is considered to be holding information on behalf of the Commission under FOIA or EIR, the Licensee will provide such information to the Commission as soon as practicable and in any event within ten Business Days (or such other period as the Commission may specify) of the Commission's request.

5.3 Where the Commission obtains information from or via the Licensee in circumstances envisaged in Paragraphs 5.1 and 5.2, it will aim to consult with the Licensee in respect of such information in accordance with Paragraph 4.1 to the extent that paragraph applies to it, and the Licensee will reply in accordance with Paragraph 4.4.

6. COMMISSION'S FREEDOM OF INFORMATION REGIME DUTIES

6.1 The Commission may, acting in accordance with the codes of practice referred to in Condition 20.12 of the Licence, be obliged under FOIA or EIR to disclose information received or originating from the Licensee, or which relates to the Licensee or any Licensee Subcontractor, Series Subcontractor or Sub Series Subcontractor, either without consulting with the Licensee, or, where the Commission does consult with the Licensee, notwithstanding any objection by the Licensee to such disclosure.

Dated:

**Signed for and on behalf
of the National Lottery
Commission:**

Mark Harris

**Signed for and on behalf
of Camelot Group plc,
company number
02822203:**

Dianne Thompson

Gill Marcus

Exemptions under the Freedom of Information Act

Section 21	Information accessible by other means
Section 22	Information intended for future publication
Section 23	Information supplied by, or related to, bodies dealing with security matters
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 32	Court records
Section 33	Audit functions
Section 34	Parliamentary privilege
Section 35	Formulation of Government policy
Section 36	Prejudice to the effective conduct of public affairs
Section 37	Communications with Her Majesty, with other members of the Royal Household and the conferring by the Crown of any honour or dignity
Section 38	Health and safety
Section 39	Environmental information
Section 40	Personal information
Section 41	Information provided in confidence
Section 42	Legal professional privilege
Section 43	Commercial interests
Section 44	Prohibitions on disclosure

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