On 1 January 2005 the Freedom of Information Act 2000 will come fully into force. This Act will affect all of us, both in our work and as UK citizens, as it gives a general right of access to all information held by authorities, including City University.

When combined with other access legislation, such as the Data Protection Act and the Environmental Information Regulations, this Act will have significant implications on the University's work as it means that in future almost all information received and created by the University will be accessible by the public.

The Lord Chancellor in his first annual report to Parliament - November 2001 stated;

“The FOI Act is challenged with the task of reversing the working premise that everything is secret, unless otherwise stated, to a position where everything is public unless it falls into specified excepted cases”.

The purpose of this presentation is to give you an overview of the Act and to make you more aware of how the Act may affect the way you work.
Principal requirements

- Right of Access
  - From 1 January 2005
- Publication scheme
  - Must publish in line with obligations
- Records management
  - Offers business benefits too

The Freedom of Information Act 2000 is “An Act to make provision for the disclosure of information held by public authorities or by persons providing services for them and to amend the Data Protection Act 1998” It places three main duties on the University and its staff.

- The first of these is the duty to respond to requests for information.

- The second obligation is to compile and implement a publication scheme. A publication scheme is a list of the information that the University intends to make available proactively (usually on the Internet) without waiting to be asked for it.

- The University publication scheme (www.city.ac.uk/foi) Lists the information the University has committed to make available. Much of this information is made available via web links and we must ensure that these remain active. You should look at the publication scheme and see what information from your area is included in the scheme. If you are responsible for any of this information, please ensure that you keep this information up to date and inform the Head of Information Compliance & Policy of any changes.

- We are also obliged to follow a code of practice on records management. This requirement was issued under section 46 of the Act. It determines that, if we could not find the information, we would not be able to respond to requests for information. However, records management also offers significant business benefits, particularly an ability to find information quickly and possibly space savings. You will find guidance on Records Management from ww.city.ac.uk/ic. The National Archives also produce some excellent guidance at www.pro.gov.uk
The City University Publication Scheme

• What we intend to publish as a matter of course
• How it is published
• How it can be accessed
• Any fees payable
• On-going process
• www.city.ac.uk/foi

The University has adopted the Model Publication Scheme for Higher Education, this publication scheme is a document which describes the information a public authority publishes, or intends to publish or proactively make available. The scheme itself is a guide, to enable the public to access information.

The publication scheme sets out the categories, of information published and details how this information can be accessed. It also details whether a charge may be applicable for this information.

You should familiarise yourself with the information contained in the scheme for your area, make sure it is kept up to date and inform the Head of Information Compliance & Policy of any changes to the web-address or additional information which should be included in the scheme.
Requests for Information

- Anyone, anywhere can ask for anything held
- Cannot ask why they want to know
- Maximum of 20 working days to respond
- Must be in writing, and include name and address of applicant
- Must describe information requested

Applicants do not need to refer to the Act or state they are making a request for information.

Complaints Procedure
(www.city.ac.uk/ic/complaints)

In order to be a valid request
- A request for information must be in writing this includes transmission by electronic means
- It must be legible
- It must be capable of being used for subsequent reference
- There is no obligation to refer specifically to the Act when making an information request so it is important that staff recognise such requests and channel them through the appropriate procedures.

The request must state:
- The name of the applicant and an address for correspondence
- A description of the information requested sufficient to enable the authority to identify and locate the information
- A request can be made by any person, including companies.

We are obliged to answer such a request for information in (at most) 20 working days. The broad definition means that any request for information counts as a freedom of information request; an enquirer does not have to say they are making a freedom of information request and the request can be made to any member of staff. Therefore all requests for information must be responded to within 20 working days.

Requesters can even ask for information that has been given to us by another organisation. We cannot ask why people want the information nor check they are bona fides, and we must be as helpful as possible in dealing with their request.
Right to information, subject to:

- Fees
- Cost ceilings
- Vexatious or repeated requests
- Further information provided
- The exemptions

-Charging for the provision of information will not apply on a cost recovery basis. The Government will lay fees regulations before Parliament in November, but have indicated there will be no charge for information that costs public bodies less than £450 to produce. The DCA has indicated that this would be roughly 2.5 days work. Where the cost of locating, retrieving and communicating the information would be greater than the cost ceiling, the authority will not be obliged to provide the information, although there is a requirement in the Act for authorities to advise and assist applicants.

- The University will not be required to deal with vexatious or repeated requests.

- The University will not be required to deal with requests unless the applicant has provided sufficient information to enable them to identify the information sought.

- There are limited exemptions to the right of access which are explained in the text accompanying slide 8.
Implications for staff

• Any request for information must be answered
  – in 20 working days
  – We cannot ask why they want to know

• If it is in your remit and you have no concerns, answer it
  – Otherwise contact the Head of Information Compliance & Policy

• Make sure someone can find your information in your absence

• All documents & e-mails may be open to accessible

Although the definition of a request means that all requests for information are freedom of information requests, many of these will be things we deal with any way as part of our normal work, and freedom of information will not change this.

You should answer any request for information, including those that you currently deal with, within 20 working days. If the request deals with something for which you are responsible and you have no qualms about providing the information, then send out the information. If it is not your responsibility to give out this information, or if you have concerns about giving out this information (perhaps it is about a sensitive topic, or it will take you a long time to provide the information) then please get in touch with the Head of Information Compliance & Policy. They will be able to advise you on what needs doing next.

The Act places the obligation to respond to requests on the University as a whole. It works on the basis that information is held by the University, and not by individual employees. Even if you are away, the University still has to meet the 20 working day target. So, please make sure that other people know what information you have and can retrieve it in your absence.

The fourth point I ask you to bear in mind, is to remember that all the work documents you create could be released under freedom of information (or data protection). This is unlikely to have a significant impact on the way you approach your work. But, particularly when writing e-mails, you should to take care that you have communicated your message clearly and professionally.
The reality of FOI:

• Covers all information ‘held’, regardless of form in which recorded
• Fully retrospective
• Anyone can apply for information
• All written requests for information to be dealt with in 20 working days*
• There is no exemption for embarrassment
• There are implications for the private sector

• Information is covered if it is ‘held’ by the public authority, regardless of whether the authority created the information. The Act covers ‘information’ regardless of how it is recorded. It may be recorded in an e-mail, on a post-it note or on tape.

• The Act covers all information held, regardless of when it was created or received. It is a misconception that the Act only applies to information created after 2000, when the Act was passed, or 2005, when it comes fully into force.

• You do not have to be a UK citizen to make a request. Requests may come from anyone, worldwide. Applicants do not have to be individuals, they may be a corporate body, pressure group etc and they do not have to give reasons for their requests.

• For the public authority, the clock starts ticking as soon as a written request is received.

• Public authorities will not be able to withhold information because disclosure would cause embarrassment, for example, because it would expose maladministration. Public authorities will have to justify withholding information and applicants will have rights of appeal if they are not satisfied.

• Whilst the Act covers ‘public authorities’, it does have implications for the private sector:
  - information received from the private sector, for example, from contractors, will be ‘held’ by the authority and therefore be subject to the Act (NB: Confidentiality clauses cannot be added to contracts to avoid disclosure under FOI. The information would have to be confidential in nature.)
The University for business
and the professions

The exemptions

• Absolute exemptions
  – No right of access under FOI
  – There may be another means of getting
    access to information

• Qualified exemptions
  – Even if the exemption applies, authorities
    must disclose if it is in the public interest to
    do so

• The exemptions are set out in Part 2 of the Act. There are 23 in total. Although this looks a large number it is important
to remember that it is highly unlikely that all the exemptions will be relevant to all organisations. For instance, a local
authority is unlikely to wish to rely on a regular basis upon the exemption relating to defence. The absolute exemptions
are listed in s.2(3) of the Act. The thinking behind a fair number of the absolute exemptions is obvious, for instance
information whose disclosure would be a criminal offence.

• In effect there is no right of access under FOI or any other legislation to information about national security bodies, court
records, information attracting parliamentary privilege and information whose disclosure would involve breach of other
legislation.

• Some of the absolute exemptions (information available to the applicant by other means, personal information that can
be obtained under the Data Protection Act) exist because it is unnecessary to make use of FOI in order to obtain
information. Although information provided in confidence is also subject to an absolute exemption, no actionable breach
of confidence occurs if there is an overriding public interest in disclosure: in effect because there is a public interest test
built into the law of confidence, there is no need for this exemption to be qualified.

• The qualified exemptions are the clear majority.

The absolute exemptions are:
• Information reasonably accessible to the public by other means
• Information directly or indirectly supplied to the public authority by certain bodies dealing with security matters, including
  GCHQ and the Security Service
• Court and associated records
• Information subject to Parliamentary privilege
• Information held by either House of Parliament whose disclosure would prejudice the effective conduct of public affairs
• Personal information where the applicant is the data subject or, in some circumstances, the data relates to another
  individual
• Information provided in confidence
• Information prohibited from disclosure under other laws, obligations or where it would involve a contempt of court

Some of the absolute exemptions include a separate test in relation to the duty to confirm or deny, i.e., even though the
exemption is an absolute one the public authority claiming it must consider whether to acknowledge the existence of the
information.

Where exemptions are not absolute exemptions they can only be relied upon by the public authority if the public interest
in maintaining the exemption outweighs the public interest in the disclosure of the information.

The exemptions subject to these rules include:
• Information intended for future publication
• Information other than that falling within section 23, which is required for safeguarding national security
• Information likely to prejudice the defence of the British Isles, any colony or the capability, effectiveness or security of the
  armed forces
• They also cover information which would prejudice or be likely to prejudice the economic interests of the UK; that which
  would prejudice or be likely to prejudice certain law enforcement matters; legal professional privilege and trade secrets or
  information which would or would be likely to prejudice the commercial interests of any person (including the holding
  public authority).
What about personal information?

• Requesting information about yourself
• Requesting information about others
• www.city.ac.uk/ic/dataprotection

Under Data Protection legislation, individuals have had the right (‘subject access right’) to find out what information is held about them, across the public and private sector, since 1985. Requests for the applicant’s own personal information will continue to be treated as subject access requests and procedures under the DPA will apply (£10 maximum fee, 40 days for responding).

The FOI Act means that for the first time the public will have a statutory right to request information about 3rd parties, as well as non-personal information. However, public authorities must not release such 3rd party information if doing so would mean breaching any of the Data Protection Principles.

You should be aware that many requests for information are likely to be ‘combined’ requests, i.e. covering personal information about the applicant, 3rd party information and non personal information. In such cases, two different timescales and charging rules will apply. For subject access requests under the Data Protection Act 1998, there is a 40 day (nb: not working days) time limit for response and a maximum fee of £10 may be charged. Under the FOI Act, the time limit is 20 working days and any fee charged must be calculated according to the Fees Regulations. Authorities will need clear procedures in place for handling requests.

All Data Protection Subject Access Requests should be referred to the Head of Information Compliance & Policy.
Summary

• FoIA assumes information will be disclosed
• Must publish information as described in its Publication Scheme
• Must help people to submit requests where necessary
• Information must be retained only as long as necessary - and must be disposed of properly
• Must ensure that data are accessible to respond to access requests promptly
• It is a criminal offence to tamper with existing records that have been requested for disclosure
Where can I get further help?

For advice and assistance contact The Head of Information Compliance & Policy

www.city.ac.uk/ic
foi@city.ac.uk
www.informationcommissioner.gov.uk

If you have any questions or difficulties, further information and assistance is available from your local practitioner or the Records Management Section. But if you keep these 5 points in mind you are unlikely to need further help. Thank you for your attention.