

CONTENTS

<i>Preface</i>	vii
<i>Preface to the First Edition</i>	ix
<i>Tables of Cases</i>	
United Kingdom	xxi
European Union	lxx
United States of America	lxxvi
Australia	lxxxii
Canada	lxxxviii
New Zealand	xc
Republic of Ireland	xc
<i>Tables of Primary Legislation</i>	
Freedom of Information Act 2000	xciii
Freedom of Information (Scotland) Act 2002	xcix
Other UK Primary Legislation	cii
<i>Tables of Secondary Legislation</i>	
Environmental Information Regulations 2004	cxxii
Environmental Information (Scotland) Regulations 2004	cxxiii
Other UK Secondary Legislation	cxxv
<i>Table of EU Legislation</i>	
<i>Table of Treaties Etc</i>	
<i>Tables of National Legislation</i>	
Australia	cxxxvi
Canada	cxxxviii
New Zealand	cxl
Republic of Ireland	cxlii
United States of America	cxliii
<i>Table of Abbreviations</i>	cxlv
<i>Web Sources</i>	
Primary material	cxlvi
Secondary material	cxlvii
Chapter 1 – Eliciting Official Information	
1. Overview of Official Information Access Legislation	2
2. Terminology	5
3. The Rationale for Official Information Access Legislation	10
4. Background to the Freedom of Information Act 2000	17
5. The Open Government Code of Practice	19
6. Enactment of the Freedom of Information Act 2000	23
7. Scotland, Wales and Northern Ireland	27
8. Development since 1 January 2005	33

Chapter 2 – The Comparative Jurisdictions

Jennifer Robinson

1. Information Rights Legislation Elsewhere	37
2. United States of America	38
3. Commonwealth of Australia	50
4. New Zealand	59
5. Canada	66
6. Republic of Ireland	74

Chapter 3 – The Influence of the European Convention on Human Rights etc

Richard Clayton QC & Estelle Dehon

1. The Influence of the Human Rights Act 1998 on Information Rights	83
2. Strasbourg Jurisprudence: Article 8	84
3. Strasbourg Jurisprudence: Article 10	88
4. Strasbourg Jurisprudence: Other Articles	93
5. International Instruments	95
6. Impact of the Human Rights Act 1998	97

Chapter 4 – Rights of Access under European Union Law

Nicholas Saunders

1. Background	103
2. The Code of Practice and Decisions 93/731 and 94/90	106
3. Regulation 1049/2001	109

Chapter 5 – Access to Personal Information under the Data Protection Act 1998

Antony White QC

1. General Principles	124
2. The Scope of the Rights: Personal Data	132
3. The Nature of the Rights	148
4. The Request	150
5. The Response	155
6. Disentitlement	159
7. Exemptions	160
8. Appeals	173
9. Enforcement	175

Chapter 6 – Access under the Environmental Information Regulations

James Maurici QC

1. Provenance of the Environmental Information Regulations	184
2. Environmental Information	191
3. The Right to Environmental Information	200
4. The Response	210
5. Exceptions – General Principles	214
6. Specific Exceptions	222
7. Appeals and Enforcement	237

Chapter 7 – Public Records

1. Background	242
2. Public Record Bodies	246
3. The Preservation of Records	250
4. Access to Public Records: The New Regime	260
5. Decision-making Responsibility in Relation to Public Records	268

Chapter 8 – Other Domestic Rights of Access

HHJ Shanks (section 9)

1. Local Government	278
2. Health, Medical and Care Records	301
3. Planning, Environmental, Public Health and Safety Information	304
4. Land Information	309
5. Personal Information	313
6. Economic and Business Information	317
7. Educational Records	324
8. Information Rights in connection with Civil Litigation	331
9. Information Rights in connection with Criminal Proceedings	343

Chapter 9 – The Right to Information

1. The Nature of Information	354
2. The Holding Requirement	361
3. Persons Entitled to Exercise the Rights	366
4. Bodies against which the Rights may be Exercised	369
5. Scottish Bodies against which the Right may be Exercised	379
6. The Obligation to Disclose and Constraints on Disclosure	383
7. Discretionary Disclosure of Information	384

Chapter 10 – The Duty to Advise and Assist, Codes of Practice and Publication Schemes

Joanne Clement

1. The Duty to Advise and Assist	389
2. The Codes of Practice	394
3. Publication Schemes	400
4. Departmental Guidance	406

Chapter 11 – The Request

Joanne Clement (sections 1–6)

1. The Request for Information	409
2. Particularising the Request	415
3. Fees	416
4. Time for Compliance	420
5. Transferring Requests for Information	427
6. Failure to Locate Information	428
7. Consultation with Third Parties	429

Chapter 12 – Disentitlement

Joanne Clement

1. Excessive Cost of Compliance	438
2. Vexatious Requests	447
3. Repeat Requests	451

Chapter 13 – The Response

Joanne Clement

1. The Duty to Search	454
2. Non-substantive Responses	456
3. Refusal to Communicate	458
4. Communication of Information	464

Chapter 14 – Exemptions: General Principles

Oliver Sanders (section 6)

1. The Unit of Exemption	472
2. The Duty to Confirm or Deny	475
3. The Discretion to Maintain an Exemption	478
4. Classification of Exemptions	482
5. Interpretation of Exemptions and Onus	492
6. Conclusive Certificates	500

Chapter 15 – Prejudice and the Public Interest

1. The Public Interest	520
2. Weighing the Public Interest: Disclosure	527
3. Weighing the Public Interest: Confirmation and Denial	534
4. Ascertaining and Weighing Prejudice	535

Chapter 16 – Information Otherwise Accessible

Eleanor Gray QC

1. Information Otherwise Accessible	542
2. Information Intended for Future Publication	548
3. Environmental Information	551

Chapter 17 – Security Bodies, National Security and Defence

Oliver Sanders

1. Introduction	556
2. The Security Bodies	567
3. Information Supplied by, or relating to, the Security Bodies	608
4. Information whose Exemption is required for National Security Purposes	614
5. National Security Certificates and the Operation of the Related Exemptions	628
6. Information Prejudicial to Defence or the Armed Forces	639

Chapter 18 – International and Internal Relations

Gerald Facenna (section 1), Oliver Sanders (section 2)

1. International Relations	649
2. Internal Relations	665

Chapter 19 – Economic and Financial Interests*Gerald Facenna*

Economic and Financial Interests	671
--	-----

Chapter 20 – Investigation, Audit, Law Enforcement and the Courts*Gerald Facenna*

1. Introduction	681
2. Information held for purposes of Criminal Investigations or Proceedings	683
3. Information relating to the Obtaining of Information from Confidential Sources	687
4. Information whose Disclosure might Prejudice the Enforcement of Criminal Law	690
5. Other Law Enforcement	694
6. Other Investigatory and Regulatory Functions	696
7. Civil Proceedings	700
8. Audit	704

Chapter 21 – Privilege*Henry King (section 1), Bankim Thanki QC (section 2)*

1. Parliamentary Privilege	707
2. Legal Professional Privilege	717

Chapter 22 – Policy Formulation and Public Affairs*Professor John Angel*

1. Introduction	731
2. Information Relating to the Formulation of Government Policy, etc	736
3. Information the Disclosure of which would be Prejudicial to Public Affairs	755

Chapter 23 – Health and Safety*Eleanor Gray QC*

Health and Safety	765
-------------------------	-----

Chapter 24 – Personal Information*Antony White QC*

1. Introduction	774
2. Personal Data of which the Applicant is the Data Subject	777
3. Personal Data of which the Applicant is not the Data Subject	779

Chapter 25 – Confidential Information*Gavin Millar QC*

1. Breach of Confidence: Introduction	797
2. Conventional Breach of Confidence	804
3. Privacy and Breach of Confidence	820
4. Trade Secrets	838
5. Prejudice to Commercial Interests	843
6. International Confidences	847
7. Environmental Information and Confidentiality	851

Chapter 26 – Miscellaneous Exemptions

Oliver Saunders (sections 1–2), Eleanor Gray QC (sections 3–6), Antony White QC (section 7)

1. Communications with Her Majesty, etc	856
2. Honours and Dignities	863
3. Prohibitions on Disclosure	870
4. Prohibitions By or Under Enactment	871
5. Incompatibility with Community Obligations	878
6. Contempt of Court	880
7. Miscellaneous Exemptions under the Data Protection Act 1998	885

Chapter 27 – The Information Commissioners and the First-tier and Upper Tribunals

HHJ Murray Shanks

1. The Functions and Duties of the Information Commissioners	891
2. Monitoring Compliance with the Acts	898
3. The First-Tier and Upper Tribunals	900

Chapter 28 – Appeals

HHJ Murray Shanks

A. APPEALS UNDER THE FREEDOM OF INFORMATION ACTS	910
1. First Stage: Internal Reconsideration	910
2. Second Stage: Application to the Information Commissioner	913
3. Third Stage: Appeal to the Tribunals	921
4. Fourth Stage: Appeal from First-Tier Tribunal to Upper Tribunal	929
5. Fifth Stage: Appeal from Upper Tribunal to Court of Appeal	930
6. Judicial Review	931
7. Third Parties: Institution of Appeals and Participation in Appeals	933
B. APPEALS UNDER THE DATA PROTECTION ACT 1998	935
8. Ordinary Appeals	935
9. National Security Certificate Appeals	937
10. Judicial Review	939
11. Third Parties: Institution of Appeals and Participation in Appeals	940

Chapter 29 – Enforcement

HHJ Murray Shanks

1. Freedom of Information Acts	941
2. Data Protection Act 1998	944

Materials

Main information rights legislation

1. Freedom of Information Act 2000 950
2. Data Protection Act 1998 1050
3. Environmental Information Regulations 2004 (SI 2004/3391) 1155
4. Public Records Act 1958 1173
5. Local Government Act 1972, Pt VA 1188
6. Access to Health Records Act 1990 1203

FOIA Statutory Instruments

1. Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (SI 2004/3244) 1209
2. Freedom of Information (Time for Compliance with Request) Regulations 2004 (SI 2004/3364) 1212
3. Freedom of Information (Excluded Welsh Authorities) Order 2002 (SI 2002/2832) 1215

DPA Statutory Instruments

1. Data Protection (Conditions under Paragraph 3 of Part II of Schedule 1) Order 2000 (SI 2000/185) 1217
2. Data Protection (Functions of Designated Authority) Order 2000 (SI 2000/186) 1219
3. Data Protection (Fees under section 19(7)) Regulations 2000 (SI 2000/187) . . . 1222
4. Data Protection (Subject Access) (Fees and Miscellaneous Provisions) Regulations 2000 (SI 2000/191) 1223
5. Data Protection (Subject Access Modification) (Health) Order 2000 (SI 2000/413) 83, 1226
6. Data Protection (Subject Access Modification) (Education) Order 2000 (SI 2000/414) 1230
7. Data Protection (Subject Access Modification) (Social Work) Order 2000 (SI 2000/415) 1233
8. Data Protection (Crown Appointments) Order 2000 (SI 2000/416) 1240
9. Data Protection (Processing of Sensitive Personal Data) Order 2000 (SI 2000/417) 1241
10. Data Protection (Miscellaneous Subject Access Exemptions) Order 2000 (SI 2000/419) 1245
11. Data Protection (Processing of Sensitive Personal Data) (Elected Representatives) Order 2002 (SI 2002/2905) 1247
12. Data Protection (Processing of Sensitive Personal Data) Order 2006 (SI 2006/2068) 1250
13. Data Protection (Processing of Sensitive Personal Data) Order 2009 (SI 2009/1811) 1252

Tribunal Rules, Orders and Practice Notes

1. Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (SI 2009/1976)	1253
2. Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698)	1276
3. First-tier Tribunal and Upper Tribunal (Composition of Tribunal) Order 2008 (SI 2008/2835)	1307
4. First-tier Tribunal and Upper Tribunal (Chambers) Order 2008 (SI 2008/2684)	1309
5. Qualifications for Appointment of Members to the First-tier Tribunal and Upper Tribunal Order 2008 (SI 2008/2692)	1314
6. Transfer of Tribunal Functions Order 2010 (SI 2010/22)	1316
7. Appeals from the Upper Tribunal to the Court of Appeal Order 2008 (SI 2008/2834)	1321
8. Practice Note: Protection of Confidential Information in Information Rights Appeals Before the First-tier Tribunal (1 February 2010)	1322
9. Practice Note: Closed Material (May 2012)	1327
10. Guidance Note 2: Permission to Appeal on or after 18 January 2010 (9 February 2010)	1329
11. Office Note 2: Discretionary Transfers of Information Rights Appeals on or after 18 January 2010	1330

Statutory Codes of Practice

1. Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part I of the Freedom of Information Act 2000 Issued under section 45 of the Act (laid before Parliament on 25 November 2004)	1330
2. Lord Chancellor's Code of Practice on the management of records issued under section 46 of the Freedom of Information Act 2000 (laid before Parliament on 16 July 2009)	1340
3. DEFRA Code of Practice on the discharge of the obligations of public authorities issued under regulation 16 of the Environmental Information Regulations 2004 (issued February 2005)	1357

European Union Directives and Regulations

1. Directive 95/46/EC of the European Parliament and of the Council on the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of Such Data (24 October 1995)	1369
2. European Union Regulation 1049/2001	1390
3. Directive 2003/4/EC of the European Parliament and of the Council on Public Access to Environmental Information and Repealing Council Directive 90/313/EEC (28 January 2003)	1397

Conventions

1. Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (25 June 1998) – Aarhus Convention 1405

Precedents

1. Simple request under the Freedom of Information Act 2000 1422
2. Request under the Freedom of Information Act 2000 where a qualified exemption is likely to be relied upon 1423
3. Request under the Data Protection Act 1998 for personal information relating to the applicant 1425
4. Request under the Environmental Information Regulations 2004 1427
5. Composite request under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 1428
6. Request for internal review (complaint) 1430
7. Complaint to the Information Commissioner 1431
8. Appeal to the First-Tier Tribunal 1433
9. Joinder Notice 1445

Procedural Guides for Dealing with Requests for Information

1. Dealing with a request under the Freedom of Information Act 2000 1449
2. Dealing with a request under the Environmental Information Regulations 2004 1456

Parliamentary History of the Freedom of Information Act 2000 1459**FOIA and FOI(S)A Comparative Table** 1460