

# CONTENTS

<i>Table of Cases</i>	xxxv
<i>Table of Legislation</i>	li
<i>Table of Conventions and Agreements</i>	lxxxvii

## A. AN INTRODUCTION TO THE FREEDOM OF INFORMATION ACT 2000

<b>1. Which Set of Rules Applies: Freedom of Information, Data Protection, or Environmental Information?</b>	
A. Introduction	1.01
The White Paper	1.01
Translating words into action	1.02
Three sets of rules	1.04
B. Personal Data	1.06
Definitions	1.06
The exemption for personal information	1.07
Applications by the data subject	1.08
Applications by third parties	1.09
C. Environmental Information	1.11
The exemption for environmental information	1.11
What is 'environmental information'?	1.12
D. Differences between the EIR and the 2000 Act	1.13
Public authorities	1.13
Differences of substance	1.14
<b>2. An Overview</b>	
A. Introduction	2.01
B. The Framework and Scheme of the Act	2.02
(1) Parts I and II and Schedule 1	2.02
(2) Section 18, Schedule 2, and Part III	2.32
(3) Parts IV and V and Schedules 3 and 4	2.40
(4) Part VI and Schedule 5	2.56
(5) Part VII and Schedule 6	2.61
(6) Part VIII and Schedules 7 and 8	2.65

3. The Historical Background	
A. The Historical Perspective	3.01
Late start	3.01
Shift in attitudes	3.03
High tide of secrecy	3.04
Crown privilege	3.10
Curbing the Crown	3.11
Parliament	3.16
Citizens' rights	3.18
B. The Development of Administrative Law	3.20
Landmark cases	3.20
Procedural reform	3.23
Reasons	3.26
C. The Campaign for Freedom of Information and Piecemeal Legislative Progress	3.31
The first Bills	3.31
Tisdall and Ponting: cases for concern	3.34
The Campaign for Freedom of Information	3.35
D. The 1994 Code of Practice	3.41
The Code	3.41
E. The Ombudsman's Investigations	3.43
F. The Campaign Continued	3.44
Open government	3.44
G. The Advance of Information Technology	3.47
The technological revolution	3.47
H. The 1997 White Paper	3.48
A change in the official culture	3.48
I. The Debate in Parliament	3.51
The scope of this section	3.51
The principles stated in <i>Pepper v Hart</i>	3.52
The public interest test	3.53
The need for an executive override or veto on disclosure	3.59
Non-disclosure and the need for prejudice	3.64
Disclosure where investigations are taking place	3.66
The environment	3.67
Formulation of government policy advice and the conduct of public affairs	3.68

B. THE STATUTORY SCHEME

<b>4. Access to Information Held by Public Authorities</b>	
<b>A. Introduction</b>	4.01
Freedom of information	4.01
The scope of this chapter	4.04
Guidance	4.06
The administrative framework	4.08
Purpose of the Act	4.20
<b>B. General Right of Access to Information</b>	4.21
The general right	4.21
<b>C. Public Authorities</b>	4.30
Definition	4.30
Automatically ceasing to be a public authority	4.32
Public authorities for some purposes only	4.36
Amendment of Schedule 1	4.43
Designation orders	4.54
Publicly-owned companies	4.58
Government departments	4.61
<b>D. Handling Requests for Information</b>	4.64
The form of the request	4.64
The definition of information	4.72
Information 'held'	4.75
Some problems	4.81
Information held at the date of the request	4.92
Communicating the information	4.95
Motive	4.98
Time for compliance	4.101
Transferring requests	4.110
Advice and assistance	4.115
Limitations on the right of access	4.125
Fees and costs	4.126
Vexatious requests	4.140
Repeated requests	4.153
Notice of the refusal of a request	4.156
<b>E. Automatic Disclosure</b>	4.164
Publication schemes	4.164
Section 19	4.165
Model publication schemes	4.167
The new model publication schemes	4.171

F. Regulation	4.176
The section 45 Code of Practice	4.176
Consultation with third parties	4.177
The Code of Practice on record management	4.180
<b>5. Exempt Information</b>	
A. Introduction	5.01
Scope of the chapter	5.01
Guidance published by the Ministry of Justice and the Information Commissioner	5.04
B. The General Operation of Section 2	5.08
The effect of exemptions	5.08
Third party rights	5.11
C. Absolute Exemption	5.15
The effect of absolute exemption	5.15
The categories of information subject to absolute exemption	5.16
Section 21: information accessible to applicant by other means	5.18
Section 23: information supplied by, or relating to, bodies dealing with security matters	5.26
Section 32: court records, etc	5.41
Section 34: Parliamentary privilege	5.60
Section 36: prejudice to effective conduct of public affairs	5.80
Section 40: personal information	5.82
Section 41: information provided in confidence	5.89
Section 44: prohibitions on disclosure	5.103
D. Qualified Exemption	5.138
The effect of qualified exemption	5.138
The categories of information subject to qualified exemption	5.142
Prejudice-based exemptions	5.145
Class-based exemptions	5.151
Section 22: information intended for future publication	5.153
Section 24: national security	5.163
Section 26: defence	5.177
Section 27: international relations	5.185
Section 28: relations within the United Kingdom	5.202
Section 29: the economy	5.212
Section 30: investigations and proceedings conducted by public authorities	5.217
Section 31: law enforcement	5.254
Section 33: audit functions	5.277

Section 35: formulation of government policy, etc	5.283
Section 36: prejudice to effective conduct of public affairs	5.316
Section 37: communications with Her Majesty, etc and honours	5.339
Section 38: health and safety	5.347
Section 39: environmental information	5.358
Section 40: personal information	5.365
Section 42: legal professional privilege	5.366
Section 43: commercial interests	5.383
<b>6. Enforcement</b>	
<b>A. Introduction</b>	6.01
<b>B. Codes of Practice</b>	6.06
Codes of Practice: general	6.06
The Code of Practice on dealing with requests for information	6.09
The Code of Practice on record-keeping	6.13
<b>C. The Information Commissioner</b>	6.15
Introduction	6.15
Statutory obligations of the Information Commissioner	6.19
Statutory powers of the Information Commissioner	6.25
<b>D. Enforcement</b>	6.53
Introduction	6.53
Complaints procedure	6.56
Applications for decision by the Information Commissioner	6.63
<b>E. Appeals to the Information Tribunal</b>	6.79
Introduction	6.79
Enforcement appeals	6.80
Procedure in enforcement appeals	6.90
National security appeals	6.112
<b>F. Appeals to the High Court</b>	6.118
<b>G. The Ministerial Veto</b>	6.123
<b>H. Contempt Proceedings</b>	6.130
<b>I. Miscellaneous</b>	6.138
No right of action against a public authority	6.138
Offences	6.139
<b>J. Third parties</b>	6.148
Applications to the Information Commissioner	6.150
Appeals to the Information Tribunal	6.151
Appeals to the High Court	6.152
Proceedings outside the provisions of the Act	6.153

<b>7. Historical Records</b>	<b>7.01</b>
A. Introduction	7.01
B. The Public Records Act 1958	7.07
Meaning of 'public records'	7.07
Transfer to the Public Record Office	7.09
Retention of public records in exceptional cases	7.12
C. Access to Records in the Public Record Office	7.16
The '30-year rule'	7.16
'Historical records'—the removal of exemptions	7.21
Requests for information in transferred public records	7.28
'Open information'	7.37
Official guidance	7.50
The task ahead	7.53
<b>8. The Position of Local Authorities</b>	
A. Introduction	8.01
An overview of the legislation	8.01
B. Part VA of the Local Government Act 1972	8.07
Access to meetings	8.07
Public notice of meetings	8.18
Copies of agendas and reports	8.19
Certain documents to remain open for public inspection	8.23
Councillors' additional rights of access to documents	8.26
Register of members	8.38
Duties and powers of local authorities to publish information	8.39
C. Local Government Act 2000	8.45
Executive structure	8.45
Meetings in public	8.47
Exclusion of the public	8.52
Procedures prior to public meetings	8.54
Key decisions	8.57
Key decisions and forward plans	8.61
Key decision procedure not followed	8.68
Individual executive decisions	8.69
Recording executive decisions	8.72
Inspection of documents	8.74
Availability of documents for inspection	8.76
Additional rights of members concerning documents	8.79
Criminal offences	8.85

D. Audits and Reports	8.86
Audited accounts	8.86
Investigations by Commissioners	8.90
E. Duties and Discretions of Local Authorities to Disclose Information	8.93
The <i>North Wales</i> case	8.94
Subsequent cases	8.101
F. The Freedom of Information Act 2000	8.106
A new perspective	8.106
Good practice	8.112
 <b>C. ENVIRONMENTAL INFORMATION</b> 	
<b>9. The Environment</b>	
A. Introduction	9.01
Introduction and history	9.01
The scope of this chapter	9.05
The Environmental Protection Act 1990	9.06
B. The Aarhus Convention	9.07
Signature	9.07
The preamble	9.09
The objective	9.10
Definitions	9.11
Access to environmental information	9.13
Collection and dissemination	9.22
Access to justice	9.25
C. Directive 2003/4	9.29
Expanding the rights to information	9.29
The objectives	9.31
Definitions	9.32
Rights	9.33
Exceptions	9.34
Charges	9.38
Dissemination of environmental information	9.39
D. The EIR 2004	9.41
The Regulations	9.41
The main differences between the regimes	9.42
Definitions	9.43
Application	9.63
Dissemination of environmental information	9.64

Information available on request	9.67
Time limits	9.68
Charging	9.69
Advice and assistance	9.73
Transfer of a request	9.74
Representations and reconsideration	9.76
Exceptions	9.78
Cases on the exceptions	9.81
Personal data	9.101
Ministerial certificates	9.102
Code of Practice and historical records	9.103
Enforcement, appeals, and offences	9.104

D. PERSONAL INFORMATION

10. Data Protection

A. Introduction	10.01
Interaction with the Freedom of Information Act	10.01
The scope of the chapter	10.02
The Data Protection Acts—origins and purpose	10.04
The way the Data Protection Act 1998 works	10.07
A glossary	10.11
B. Definitions and the Extent of the Data Protection Act	10.12
Definition of 'personal data'	10.12
Data covered by the 1998 Act	10.26
Sensitive personal data	10.32
Application of the 1998 Act	10.33
Definition of 'data controller'	10.34
Definition of 'processing'	10.35
C. The Data Protection Principles	10.41
Introduction	10.41
The first principle	10.44
Schedule 2 conditions	10.45
Schedule 3 conditions	10.47
'Fairly and lawfully'	10.48
Exemptions from the first principle	10.60
The second principle	10.61
The third principle	10.64
The fourth principle	10.67
The fifth principle	10.69
The sixth principle	10.71



	The seventh principle	10.73
	The eighth principle	10.75
D.	Rights of Data Subjects	10.78
	General provisions	10.78
	Right of access	10.83
	Right to prevent processing likely to cause damage and distress	10.99
	Right to prevent processing for the purposes of direct marketing	10.104
	Rights in relation to automated decision-taking	10.109
	Rectification, blocking, erasure, and destruction of inaccurate data	10.115
	Compensation	10.119
E.	Exemptions	10.123
	General provisions	10.123
	National security	10.124
	Crime and taxation	10.128
	Health, education, and social work	10.130
	Regulatory activity	10.135
	Journalism, literature, and art	10.136
	Research, history, and statistics	10.139
	Manual data held by public authorities	10.140
	Information available to the public by or under any enactment	10.141
	Disclosures required by law or made in connection with legal proceedings, etc	10.142
	Parliamentary privilege	10.144
	Domestic purposes	10.145
	Miscellaneous exemptions	10.146
	Powers to make further exemptions by order	10.147
F.	The Information Commissioner and Information Tribunal	10.148
	Information notices	10.154
	Enforcement notices	10.158
G.	The 1998 Act and the 2000 Act	10.161
<b>E. EUROPE</b>		
<b>11. Freedom of Information in the European Union</b>		
A.	Introduction	11.01
B.	The History of Access to Documents in Europe	11.03
	The Maastricht Treaty and the Code of Conduct	11.03
	The Treaty of Amsterdam	11.06
C.	The Council Regulation (EC) 1049/2001	11.12

The text and recitals	11.12
The purpose clause	11.13
Beneficiaries and scope	11.14
Definitions	11.16
Exceptions	11.17
Sensitive documents	11.32
Applications	11.33
Information and administrative practice	11.42
Reports	11.43
D. The EU and the Aarhus Convention	11.46
E. Proposals for Reform	11.61
F. Conclusion	11.65

F. FREEDOM OF INFORMATION AND THE  
COMMERCIAL WORLD

12. Implications for Business

A. Introduction	12.01
Opportunities and risks	12.01
The needs of business recognized in Europe	12.04
The current position	12.08
The scope of this chapter	12.10
B. The Exemptions: Confidentiality and Commercial Interests	12.11
Section 41	12.11
Section 43	12.14
C. The Cases	12.15
<i>The National Maritime Museum case</i>	12.15
Case reference FS 50097376: <i>Welsh Development Agency</i>	12.19
<i>Derry City Council v Information Commissioner</i>	12.22
Case reference FS50107458: <i>The National Gallery</i>	12.33
Case reference FS50153399: <i>Trafford Metropolitan BC</i>	12.36
Case reference FS50086077: <i>The BBC</i>	12.37
Case reference FS501234488: <i>The FSA</i>	12.40
<i>Anthony Craven v Information Commissioner</i>	12.47
<i>North Western and North Wales Sea Fisheries Committee v Information Commissioner</i>	12.54
D. Guidance	12.56
Information provided in confidence (section 41): The Information Commissioner's awareness guidance	12.56

Information provided in confidence (section 41): The Ministry of Justice's <i>exemptions guidance</i>	12.63
Commercial interests (section 43): Information Commissioner's <i>awareness guidance</i>	12.72
Commercial Interests (section 43): The Ministry of Justice's <i>exemptions guidance</i>	12.88
<b>13. Disclosure in Commercial Disputes</b>	
A. Introduction	13.01
The scope of the chapter	13.01
B. The Disclosure of Documents	13.11
Introduction	13.11
The scope of disclosure	13.16
How disclosure is given	13.25
Inspection	13.33
Specific disclosure or inspection	13.35
Miscellaneous provisions regarding disclosure or inspection	13.38
Withholding inspection or disclosure	13.43
The grounds for withholding inspection or disclosure	13.46
Disclosure before proceedings start	13.77
Disclosure against a person not a party	13.80
Other powers of the court to order disclosure	13.82
C. Obtaining Further Information	13.85
D. Requiring a Witness to Attend Court to Give Evidence or to Produce Documents to the Court	13.97
<b>14. The Internet</b>	
A. Introduction	14.01
B. Building the Superhighway	14.02
Definitions: I	14.02
Early years	14.03
Definitions: II	14.05
The Web	14.06
C. Using the Web: A Practical and Legal Analysis	14.07
Internet use is information exchange	14.08
Visiting a webpage	14.09
Safe to surf?	14.10
When I press 'send', where does it go?	14.11
Dispersed resources	14.12
WHOIS who?	14.13

## Contents

---

Information travels, documents do not	14.14
ISPs	14.15
Virtual reality	14.18
Cookies	14.19
Spyware	14.23
Phorm and content	14.24
D. The Internet: Legal Issues	14.25
A brave new world	14.26
Legal challenges to Internet freedom	14.27
Jurisdictional issues	14.28
Worldwide jurisdiction	14.29
<i>The Yahoo!</i> and <i>Chuckleberry</i> cases	14.30
A narrower view of jurisdiction	14.33
The <i>Dow Jones</i> cases	14.34
US decisions on Internet jurisdiction	14.38
The Electronic Commerce (EC Directive) Regulations 2002	14.41
The Convention on Cybercrime	14.42
Adapting the existing law	14.44
Liability to the whole world	14.45
Intergovernmental Internet regulation	14.46
E. Access to Public Information and the Internet	14.47
Some advantages	14.48
Some pitfalls	14.50
Convenience versus control	14.51
Defamation by website	14.53
Jurisdiction and enforcement are two different things	14.55
Hackers and crackers	14.57
Viruses	14.59
F. Conclusion	14.60
<b>15. Freedom of Information and Intellectual Property</b>	
A. Introduction	15.01
B. The Protection of Intellectual Property Rights	15.02
Copyright	15.05
Database right	15.07
Patents	15.08
Confidential information	15.11
C. When Might Intellectual Property Rights be Threatened by the Freedom of Information Act 2000?	15.12

Infringement of intellectual property rights by disclosure	15.12
Infringement after disclosure	15.13
D. Exemptions Protecting Intellectual Property Rights	15.14
Absolute exemptions	15.14
Conditional exemptions	15.17
E. The Interaction of Intellectual Property Rights and Freedom of Information	15.26
The <i>Glen Marlow</i> case	15.26
<i>Office of Communications v Information Commissioner</i>	15.32
F. The European Perspective	15.35
G. PRIVACY, CONFIDENTIALITY, AND HUMAN RIGHTS	
16. Privacy and Confidentiality	
A. Introduction	16.01
Section 41	16.01
No right of privacy at common law	16.03
<i>Kaye v Robertson</i>	16.04
<i>Wainwright v Home Office</i>	16.06
The Human Rights Act 1998	16.11
B. The Traditional Action for Breach of Confidence	16.13
The old cases	16.13
The essentials of the doctrine	16.15
<i>Stephens v Avery</i>	16.16
Defences	16.17
Remedies	16.25
C. The Way the Traditional Action for Breach of Confidence has been Developed	16.30
The secret information cases	16.32
The privacy cases	16.33
The position of children	16.34
D. The New Cases	16.36
The decision in <i>Earl Spencer v The United Kingdom</i>	16.36
An analysis of the judgment in the <i>Venables</i> case	16.38
<i>A v B plc</i>	16.50
<i>Campbell v MGN Ltd</i>	16.52
<i>Re S (a child)(identification: Restrictions on publication)</i>	16.65
<i>Princess Caroline von Hannover v Germany</i>	16.70
<i>Douglas and others v Hello! and others</i>	16.72
<i>McKennitt v Ash</i>	16.77

<i>HRH Prince of Wales v Associated Newspapers Ltd</i>	16.80
<i>Murray v Big Pictures (UK) Ltd</i>	16.86
<i>Mosley v News Group Newspapers Ltd</i>	16.90
E. Section 41: The First Case	16.92
<i>Home Office v British Union for the Abolition of Vivisection</i>	16.92
F. The New Law of Confidentiality and Misuse of Private Information	16.100
Conclusions	16.100
G. Regulation	16.101
The Press Complaints Commission	16.101
Regulation of broadcasting	16.107
H. Other Protection	16.109
The Protection from Harassment Act	16.109
I. When Government is Entitled to Protect Information from Disclosure	16.110
Lord Scott's principles	16.110
The Australian view	16.114
The constitutional principle of accountability	16.115
<b>17. The Human Rights Act 1998</b>	
A. Introduction	17.01
Introduction	17.01
Scope of the chapter	17.02
B. The European Convention for the Protection of Human Rights and Fundamental Freedoms	17.04
History	17.04
Main provisions	17.08
C. The Human Rights Act 1998	17.15
A compromise	17.15
Convention jurisprudence applies to the common law	17.17
Legislation to be construed as compatible with Convention rights	17.20
Public authorities to comply with Convention rights	17.27
Proceedings and remedies	17.29
Freedom of expression	17.33
D. Enforcing the Convention against Individuals	17.34
How far does the Convention apply to rights between individuals?	17.34
E. A Convention Right to Information?	17.40
Is there a Convention right to freedom of information?	17.40
<i>Guerra v Italy</i> : a step towards a right to information	17.45

F.	Conflicting Rights	17.55
	Section 12 of the Human Rights Act 1998	17.55
	Section 12 raises the threshold test for interlocutory injunctions	17.57
	Balancing conflicting rights	17.65
	The principle of proportionality	17.72
G.	Judicial Review and Proportionality	17.77
	The relationship between proportionality and judicial review	17.77
	<i>R (Daly) v Secretary of State for the Home Department</i>	17.82
	The common law of human rights	17.89
	Judicial review and the Freedom of Information Act	17.94
H. RELATED STATUTES		
18. Secrecy		
A.	Introduction	18.01
B.	The Official Secrets Act 1989	18.08
	Overview	18.08
	The categories of information protected by the 1989 Act	18.18
	The offences under sections 1(3), 2, 3, and 4	18.26
	Crown servants and government contractors	18.27
	Requirement that the unauthorized disclosure be damaging	18.39
	Section 1(1)	18.47
	Lawful disclosure	18.53
	Statutory defences	18.61
	Consent of the Attorney-General to prosecutions	18.70
	Interference with the right to free expression	18.71
	Offences committed by persons who receive protected information	18.80
	Secret hearings	18.89
C.	Official Secrets and the Freedom of Information Act	18.93
19. Whistle-Blowing		
A.	Introduction	19.01
	Scheme of the Public Interest Disclosure Act 1998	19.03
B.	Mandatory Whistle-blowing	19.08
	Pension schemes	19.08
	Financial institutions: duties of auditors and actuaries	19.10
	Consequences of breach of whistle-blowing duties	19.15

C. The Public Interest Disclosure Act 1998	19.18
Timing of protected disclosures	19.18
Who counts as a 'worker'?	19.21
Excepted categories of worker	19.22
Part IVA of the Employment Rights Act 1996	19.25
Qualifying disclosures	19.26
Persons to whom protected disclosures are to be made	19.37
Good faith	19.39
Internal disclosures—sections 43C and 43E	19.46
Disclosure to prescribed persons—section 43F	19.48
External disclosures—sections 43G and 43H	19.51
The right not to be unfairly dismissed	19.60
Remedies for unfair dismissal	19.69
The right not to be subjected to detriment	19.74
Remedies for subjection to detriment	19.85
Protected disclosures and breaches of confidentiality	19.88
Concluding remarks	19.93
<b>20. Money Laundering</b>	
A. Introduction	20.01
Meaning of money laundering	20.03
B. The International Dimension to Money Laundering	
Legislation	20.06
The Vienna Convention	20.09
First Money Laundering Directive	20.12
Second Money Laundering Directive	20.17
Third Money Laundering Directive	20.21
C. Domestic Legislation	20.26
The Proceeds of Crime Act 2002	20.30
The Money Laundering Regulations 2007	20.44
Offences relating to terrorist property	20.48
D. Blowing the Whistle on Money Laundering	20.50
Voluntary whistle-blowing	20.50
Mandatory whistle-blowing	20.55
Failure to disclose: regulated sector	20.58
Failure to disclose: nominated officers in the regulated sector	20.64
Failure to disclose: other nominated officers	20.68
Tipping off	20.72



## Contents

---

Duty of disclosure in relation to terrorist offences	20.78
E. Protecting the Whistle-blower	20.81
Protecting banks who blow the whistle on money launderers	20.84
F. Conclusion	20.90
<b>21. Medical Records</b>	
A. Introduction	21.01
Very personal information	21.01
Historical background	21.03
B. How the Detailed Rules Apply	21.07
Public authorities and accessible records	21.07
Health professionals	21.08
Children, parents, and adults lacking mental capacity	21.11
Exemptions and partial exemptions	21.16
C. Cases	21.21
Confidential information	21.21
<i>W v Egdell</i>	21.23
<i>A Health Authority v X</i>	21.25
<i>Mersey Care NHS Trust v Robin Ackroyd</i>	21.26
D. Access to Medical Reports Act 1988	21.28
E. Access to Health Records Act 1990	21.35
After death	21.42
F. The Health and Social Care Act 2001 and National Health Service Act 2006	21.49
The 2002 Regulations	21.50
G. The NHS Care Record Guarantee	21.61
<b>22. Land Registration, the Census Act, and the Registration Acts</b>	
A. Land Registration	22.01
Introduction	22.01
Essential principles	22.05
Accessibility of information	22.12
Electronic conveyancing	22.28
B. The Census Act	22.37
Introduction	22.37
General and local census	22.40
Census information	22.44
C. The Registration Acts	22.54

I. DEVOLUTION

23. Scotland

A. Introduction	23.01
B. Government in Scotland	23.03
The UK and Scottish Parliaments	23.03
The Scottish Parliamentary Corporate Body	23.07
The Administration in Scotland	23.08
Local government	23.13
European Union	23.16
C. The United Kingdom Regimes and the Scottish Regimes	23.18
Demarcation between the UK and Scottish Acts	23.18
Principal points of difference between the UK and Scottish Acts	23.21
Demarcation between the Environmental Information Regulations 2004 and the Environmental Information (Scotland) Regulations 2004	23.23
D. Application of the UK Regimes in Scotland	23.24
E. The Scottish Act and the Scottish Environmental Information Regulations	23.27
(1) The right of access under the Act to information held by Scottish public authorities	23.29
The general entitlement	23.29
Scottish public authorities	23.31
Information to which the entitlement applies	23.40
Exempt information	23.43
Absolute exemptions	23.46
Dispensations in the nature of absolute exemptions	23.61
Qualified exemptions	23.63
Dispensation from revealing whether information is held	23.110
Historical records and the falling away of exemptions with time	23.113
Protection from actions for defamation	23.118
(2) Environmental information	23.119
The entitlement to information	23.120
Environmental information	23.121
Scottish public authority	23.123
Exceptions to the duty of disclosure	23.124
Environmental information containing personal data	23.128
The Aarhus Convention	23.131
(3) General measures promoting freedom of information	23.132
Introduction	23.132
Publication schemes	23.133
Codes of Practice	23.139
Authorities' general duty to provide advice and assistance	23.142

## Contents

The Commissioner's supervisory role	23.145
Active dissemination of environmental information	23.148
(4) The Scottish Information Commissioner	23.149
Appointment and independence of the Commissioner	23.149
The Commissioner's functions	23.156
(5) Procedure and enforcement	23.165
Outline	23.165
Requests for information	23.170
Time for compliance	23.173
Responses to requests	23.177
Table setting out the order in which an authority might consider the available substantive responses	23.206
Challenging an authority's handling of a request for information	23.207
Reviews by authorities of their decisions	23.210
Applications to the Commissioner for decision	23.217
Information notices	23.231
Enforcement notices	23.239
Compliance by authorities with decision notices and enforcement notices	23.242
Appeals to the Court of Session	23.248
The Commissioner's powers of entry and inspection	23.249
Offence of altering records with the intention of preventing disclosure	23.252
(6) Enforcement in respect of requests for environmental Information	23.253
(7) The Keeper of the Records of Scotland	23.257
F. Some Other Methods of Obtaining Access to Official Information in Scotland	23.261
Local authorities	23.262
Information sought for the purpose of civil proceedings	23.264
<b>24. Wales and Northern Ireland</b>	
A. Introduction	24.01
B. The Scheme of Devolution for Wales	24.03
The National Assembly for Wales	24.04
The Welsh Assembly Government	24.08
The National Assembly for Wales Commission	24.11
The Welsh Administration Ombudsman	24.12
C. Freedom of Information in Wales	24.14
Entities to which the Act applies	24.14
Exempt information	24.29
Enforcement	24.35

Miscellaneous provisions	24.39
The Code of Practice on Public Access to Information	24.41
<b>D. The Scheme of Devolution for Northern Ireland</b>	<b>24.53</b>
The Belfast Agreement	24.53
The Northern Ireland Assembly	24.54
The Northern Ireland Executive	24.60
The Assembly Commission	24.61
<b>E. Freedom of Information in Northern Ireland</b>	<b>24.62</b>
Entities to which the Act applies	24.62
Exempt information	24.71
Enforcement	24.75
Miscellaneous provisions	24.78
<b>J. A COMPARATIVE VIEW</b>	
<b>25. The Right to Know in Australia, Canada, Ireland, New Zealand, and the United States</b>	
A. Introduction	25.01
B. Australia	25.04
The objects of the Freedom of Information Act	25.04
The history of the Act	25.07
Proposals for reform	25.09
The right of access	25.12
Making and processing requests	25.16
Exemptions	25.31
Personal information	25.36
Reviews and appeals	25.39
Ancillary provisions	25.50
C. Canada	25.57
Purpose and principles	25.57
The right of access	25.59
Government institutions	25.65
How requests are to be made and dealt with	25.68
Exemptions	25.74
Severance	25.84
Third party intervention	25.85
The Information Commissioner	25.91
The role of the Court	25.100
Offences	25.105

## Contents

Exclusions	25.107
Reform	25.111
<b>D. Ireland</b>	<b>25.113</b>
Introduction	25.113
Rights conferred by the Act	25.115
Exercise of the right of access	25.123
Exempt records	25.142
The Information Commissioner and the courts	25.154
<b>E. New Zealand</b>	<b>25.167</b>
Legislation	25.167
Background	25.169
Purpose	25.174
Principle of availability	25.177
Exemptions	25.181
Requests for access to official information	25.188
Publication of, and access to, certain documents and information	25.196
Right of access to personal information	25.199
Complaint to Ombudsmen	25.202
Third parties	25.210
<b>F. The United States</b>	<b>25.211</b>
Introduction	25.211
Exemptions	25.215
Response to a request	25.217
Expedited access	25.222
Appeals	25.223
Judicial review	25.224
Third party suits	25.227
The 1996 Amendments	25.228
The 2007 Amendments	25.234
Use of the Freedom of Information Act	25.237
Related statutes	25.238
<b>K. THE FUTURE</b>	
<b>26. The Future</b>	
<b>A. Introduction</b>	<b>26.01</b>
A constitutional right	26.01
Brown on liberty	26.03
<b>B. Proposals under Discussion</b>	<b>26.04</b>
Widening the scope of the 2000 Act	26.04
Amending the thirty-year rule	26.05

Data sharing report	26.07
C. Simple Legislation with a Clear Structure	26.11
A purpose clause	26.11
Structure of the Freedom of Information Act	26.13
The exemptions	26.16
Policy advice and the conduct of public affairs	26.21
Third parties	26.26
The executive override	26.27
The Law Commission	26.28
D. Conclusions	26.29
<b>Appendices</b>	
A. Freedom of Information Act 2000	943
B. Data Protection Act 1998	1015
C. The Environmental Information Regulations 2004 (SI 2004 No 3391)	1097
D. 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	1113
E. Lord Chancellor's Code of Practice on the Management of Records under Section 46 of the Freedom of Information Act 2000	1123
F. Code of Practice on the Discharge of the Obligations of Public Authorities under the Environmental Information Regulations 2004 (SI 2004 No 3391)	1133
G. Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (SI 2004 No 3244)	1147
H. Information Tribunal (Enforcement Appeals) Rules 2005 (SI 2005 No 14)	1151
I. Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001	1165
J. Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on Public Access to Environmental Information and Repealing Council Directive 90/313/EEC	1173
 <i>Index</i>	 1181