

**Leigh Day**

**Requesting information under the  
Freedom of Information Act and the  
Data Protection Act**

**Leigh Day / CORE Training Event on Access to Information**

**10 July 2015**

**Emily Soothill**

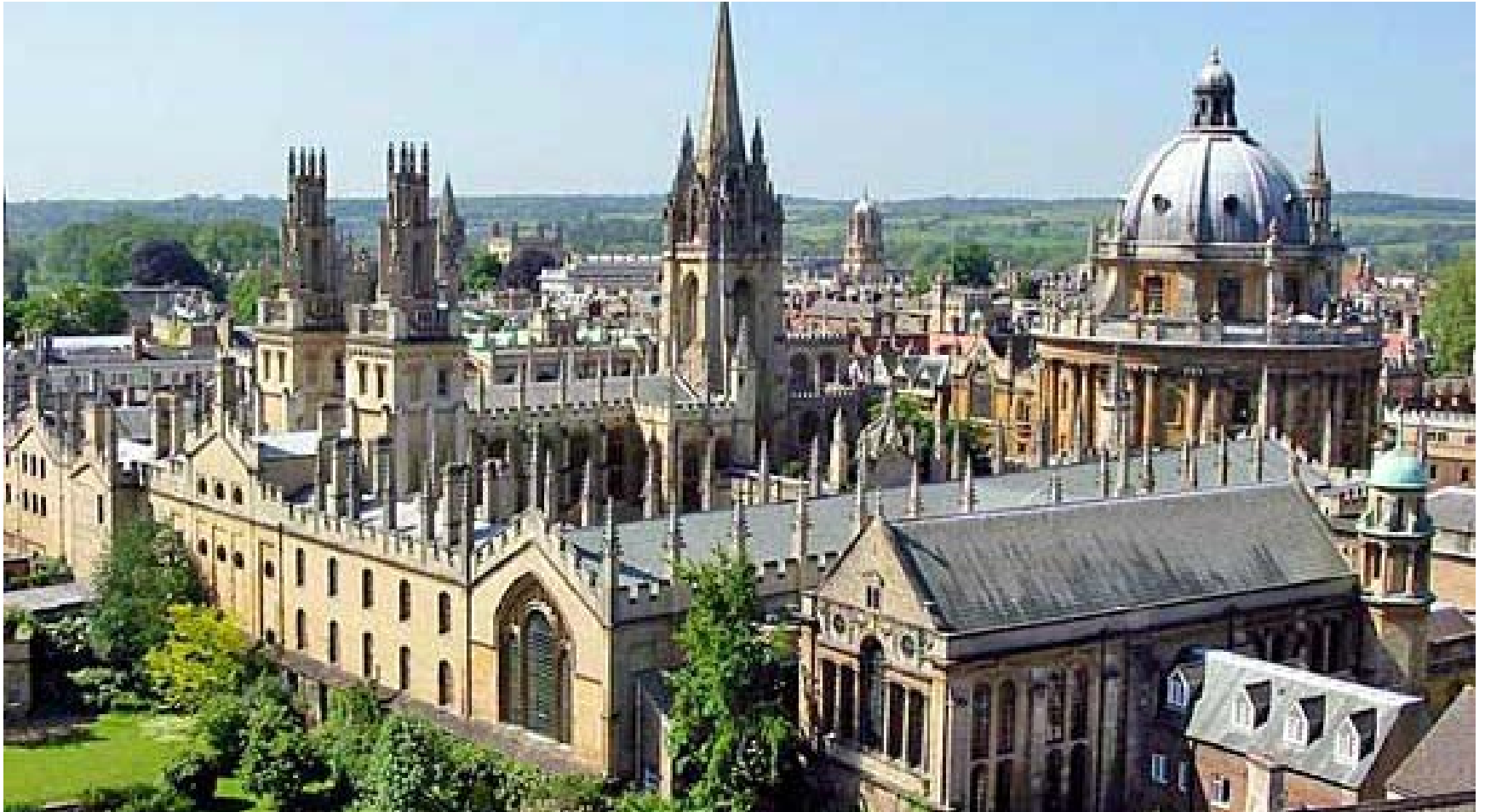
# Freedom of Information Act 2000 (FOIA)

*"Freedom of Information Act. Three harmless words. I look at those words as I write them, and feel like shaking my head 'til it drops off. You idiot. You naive, foolish, irresponsible nincompoop. There is really no description of stupidity, no matter how vivid, that is adequate. I quake at the imbecility of it."*

Tony Blair



**Leigh Day**



**Leigh Day**



**Leigh Day**

# Making a FOIA Request

- Contact the relevant authority directly
- Make the request in writing
- Provide your name and an address to which the authority can reply
- You can request any information held by the public authority
- You do **not** have to:
  - Mention the FOIA, although it may help to do so;
  - Know whether the information is covered by the FOIA; or
  - Say why you want the information

# Responding to a FOIA Request

- Must reply within 20 working days
- Public authorities are required:
  - to tell the applicant whether they hold any information falling within the scope of their request; and
  - to provide that information
- Government departments and other bodies often publish responses online



# Refusing a FOIA Request

- Requests can be refused if:
  - It would cost too much or take too much staff time to deal with the request;
  - The request is vexatious; or
  - The request repeats a previous request from the same person
- Exemptions under sections 21-44 of the FOIA e.g. court records, criminal investigations and commercial interests
- Required to provide a written refusal notice

# Information Commissioner's Office

- Complaints can be made to the ICO
- Public authorities may be in breach of the FOIA if they:
  - fail to respond adequately to a request for information; or
  - deliberately destroy, hide or alter requested information to prevent it being released

# **Data Protection Act 1998 (DPA)**

# The right of access

Individuals have the right to:

- A description of their personal data, the purposes for which it is being processed, and those to whom it may have been disclosed;
- A copy of the data in an intelligible form;
- Any information available about the source of the data; and
- If requested, an explanation as to how any automated decisions have been made

# What is personal data?

- Data relating to an individual who can be identified (Section 1, DPA):
  - from the data; or
  - from the data and other information which is in the possession of, or is likely to come into the possession of, the data controller; and
  - includes any expression of opinion about the individual and any indication of intentions in respect of the individual
- *Durant v Financial Services Authority* [2003] EWCA Civ 1746: “Information which affects an individual's privacy, whether in his personal or family life, business or professional capacity”

# Making a SAR

- Make the request in writing
- Give your full name, address and contact telephone number
- Provide any information used to identify or distinguish the individual from others of the same name (e.g. unique ID)
- Give details of the specific information you require and any relevant dates
- Requests can be made by a third party with written authority
- It may also be helpful to include:
  - reference to the deadline;
  - reference to the DPA; and
  - reference to the Information Commissioner's Office

# Responding to a SAR

- Must reply within 40 (not working) days
- The data controller may require payment of a £10 fee
- Exemptions under Sections 27-39 and Schedule 7 of the DPA, e.g.
  - Prevention or detection of crime, apprehension or prosecution of offenders or assessment or collection of tax
  - Information already in the public domain
  - Management forecasting or management planning where access would be likely to prejudice the conduct of that business or other activity
  - Information over which legal professional privilege could be maintained in legal proceedings

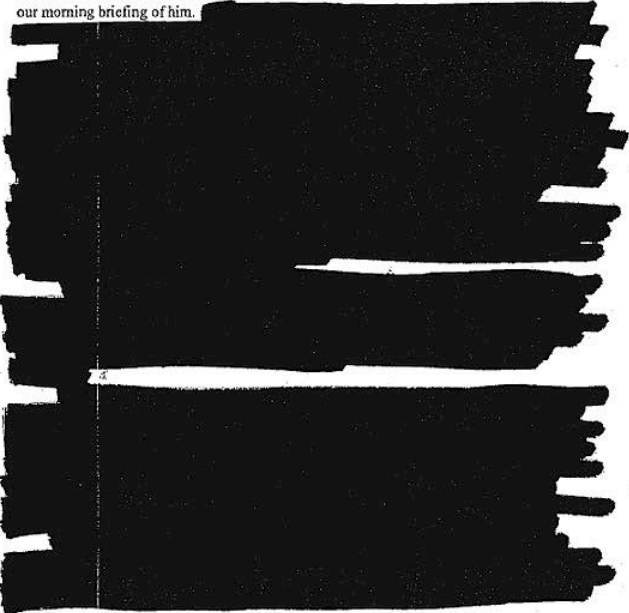
# Third Party Information

- The data controller does not have to comply if it would mean disclosing information about a third party, unless(Section 7(4), DPA):
  - third party consents to the disclosure; or
  - it is reasonable in all the circumstances to comply with the request without consent

- Data controller can redact third party information

Friday, 3/12/04:

0945: The President called me into the side office off the Oval Office after we had concluded our morning briefing of him.





# Summary

	FOIA	DPA	Comparison with litigation
<b>Who can information be requested from?</b>	Public authorities	Data controllers	Public authority/data controller does not need to be a Defendant in Proceedings
<b>Type of information which can be requested</b>	<u>Any information</u> held by the public authority	Personal data	Not confined to information relevant to issues in dispute
<b>How to make the request</b>	Make the request in writing	Make the request in writing	Requests can be made before proceedings are issued
<b>Response</b>	20 working days	40 days	Public authorities and data controllers can be put to more effort than the 'reasonable search' in standard disclosure
<b>Cost</b>	Fees may be charged when the cost of compliance exceeds the appropriate limit	£10 maximum	Cheaper than litigation
<b>Complaints</b>	Complaints can be made to the ICO	Complaints can be made to the ICO	Both the ICO and the Court have powers to order disclosure

# QUESTIONS

