

FREEDOM OF INFORMATION ACT 2000

SUMMARY GUIDANCE

This guidance is a short and succinct summary of what you need to know and do about the Freedom of Information Act 2000 (FOIA).

This guidance is **no substitute for the full guidance** available to everyone on the Portal.



With effect from 1 January 2005, the Freedom of Information Act 2000 (FOIA) granted new rights of access to information held by government departments and other public authorities.

Key Points:

- Came into force 1st January 2005
- Gives increased access rights to all information we hold.
- Gives the Information Commissioner powers to enforce the release of information
- Requests under the FOI Act:
 - Must be writing (and e-mail is regarded as writing)
 - Can come from anybody, anywhere in the World
 - Don't have to quote or cite the FOI Act
 - Don't have to explain why they want the information
- We have to reply to requests within 20 working days.
- ***“Need to Know” principle replaced by “the Right to Know” principle.***

Exemptions

- Some information will be exempt from disclosure under the Act
- Some exemptions are absolute, but most are subject to a public interest test
- In practical terms, the exemptions will have limited applicability in the Agency; most of our records will have to be disclosed if asked for

Importance of complying with the FOIA

It is imperative that requests under the FOIA and related information access regimes (primarily the environmental information and data protection regimes) are handled correctly.

Failure to do so will affect the Agency's (and possibly the Government's) credibility and may result in enforcement action being taken against the Department, the Agency or individuals within the Agency, by the Information Commissioner and the courts.

Practical Steps You Should Have Taken, or Should Take Now.

All staff should have attended an FOIA Briefing. If you have not had training, contact the [FOI Advice team](#)

At least one person within your Division should have received Intermediate-level training. **You should ensure that you know who has received the Intermediate training, and understand that they are normally your first point of call for advice on FOIA issues.**

FOIA cases will have to be recorded on the Correspondence Recording System (CRS). Those of you whose divisions already make use of CRS will have no difficulty with this. **Teams who do not use CRS should contact Service Direct for access and training, or can ask the FOI Advice team to log entries on an ad hoc basis.**

Detailed advice and guidance on FOIA is available on the Portal. In particular, there is a list of people who specialise in FOI and DPA who can be contacted by anyone who wants further advice and guidance at any stage.

You need to have a **clear picture of how you organise your information, where it is kept, and for how long.**

You need to have a **clear understanding of the information held on your behalf by any supplier/agent/contractor working for you, as legally this will be deemed information you hold.**

You should ensure that you do not hold any “private” collections of business-related information.

Handling FOIA Cases

You will find a flow chart for handling FOIA cases in WwW. The following key guidance should help you understand the basic process.

Duty to Provide Advice and Assistance

For all normal circumstances, section 16 of the FOIA places **a clear duty on us to be helpful** and to assist anyone looking for information. This may mean helping them formulate their query in advance of its submission to the Agency.

What is an FOIA Case?

A request for information becomes an FOIA case when we decide to treat it differently because the FOIA is in force.

That is, if the requirements of the FOIA have no impact on the handling of the request, and it is handled exactly as it would have been handled prior to FOIA, then it is “Business as Usual” and should not be counted as an FOIA request.

So if, for example, we are asked for some information and we routinely supply that information (within the Whitehall Standard period of 15 days), then FOIA has no impact and this is not an FOIA case.

It is possible for TO, MSU and CEO cases to be FOIA cases, and if so, they should be recorded as such on the CRS.

Transferring Requests to Other Divisions or Other Parts of the Agency/DfT

Given the 20-day deadline, it is essential that cases be considered as early as possible. In particular, it is vital that if a case needs to be transferred elsewhere, that this is done as soon as the need is identified. Cases transferred within the DfT and its family of Agencies all have to be answered in the 20 working day period.

There is a particular need where **commercial and/or Procurement related information** is requested. You should at very least consult colleagues in Procurement Directorate, and in most cases, you will probably want to transfer the request to them to deal with. Contact Francis Campbell for more information on commercial information related requests.

Charging for Requests/ Information

DfT policy has settled on a “keep it simple” approach, based on the statutory regulations made earlier this month. The basic process is as follows:

- The time needed to find, read, sort, edit, redact, copy and despatch the requested information is to be estimated.
- That time is then to be costed at £25 per hour, regardless of whose time it is.
- If the estimated cost exceeds £600 (i.e. 24 person-hours) then
- We should discuss with the requester how to reduce the scope –and therefore the cost– of the request.

- If it is not possible to reduce the scope then we will refuse to assemble and supply the requested information.
- If the estimated time is below £600, then we will continue to process the request.

Exemptions

The FOIA provides 24 different classes of exempt information. These are set out below, sorted into three categories – those most relevant to the Agency, those with some relevance and those with little relevance to us.

Some exemptions are “**absolute**” exemptions. Those that are not absolute exemptions are subject to a **public interest test**. That is, in order for us to use a non-absolute exemption, we have to be of the opinion that it is in the wider public interest to withhold the information rather than release it.

Many exemptions, although exempting information from release, do not exempt **our duty under the Act to confirm or deny whether we hold such information**.

The practical use of the exemptions is likely to need careful consideration. There is usually no option other than to use the detailed guidance available on the Portal, the advice of your colleagues who have received Intermediate-level training, and advice from the CD Information Management Policy Team. Legal advice will also be obtained whenever necessary.

Public Interest Test

This is a test conducted by at least 3 people, to see whether the reasons for non-disclosure outweigh the reasons why information should be released into the public domain. The emphasis is always on proving the case for rather than against releasing documents.

Redaction

This is the editing of documents to remove information, which may be exempt under a section of the Act. It allows the rest of the document to be disclosed without releasing information that is covered by an absolute exemption, or is not in the public interest to be disclosed. Do not black out exempt sections. Always cite the exemption at the missing section.

Time Constraints

Normally, requests being dealt with under FOIA have to be replied to within 20 working days.

This period may be extended

- If you have to consult third parties,
- If you are undertaking a Public Interest Test.
- If a fees notice has been sent, when the requestor has 3 months to pay for any disbursements

However, in both cases, you must inform the requestor of the position, and you must give them a firm estimate of when you are likely to give them a full reply

Standard or Model Letters

Standard or Model letters are available for the various stages of handling FOIA requests. These are available on the FOI Framework, of the Information Management Portal Community.

Other Relevant Legislation

In dealing with requests under FOIA, you will need to bear in mind the special requirements concerning Environmental information set out in the Environmental Information Regulations (EIR). Information about the EIRs is available on the FOI Framework.

You also need to ensure you treat personal information appropriately within the terms of the Data Protection Act.

Making Decisions

The Permanent Secretary has decided that decisions to release information previously unreleased, or to refuse to release any requested information (i.e. to use one or more of the exemptions) should always be taken by a member of the SCS.

Appeals and Complaints

A requester can complain or appeal against any decision the Agency makes. In the first instance, Divisional Directors will be required to review their decision. They can then either:

- ❑ revise their decision and release further information, or
- ❑ stand by their initial decision.

If they chose not to revise their decision, an element of independence will be introduced to the review by a second stage, where a member of the Board will review the case.

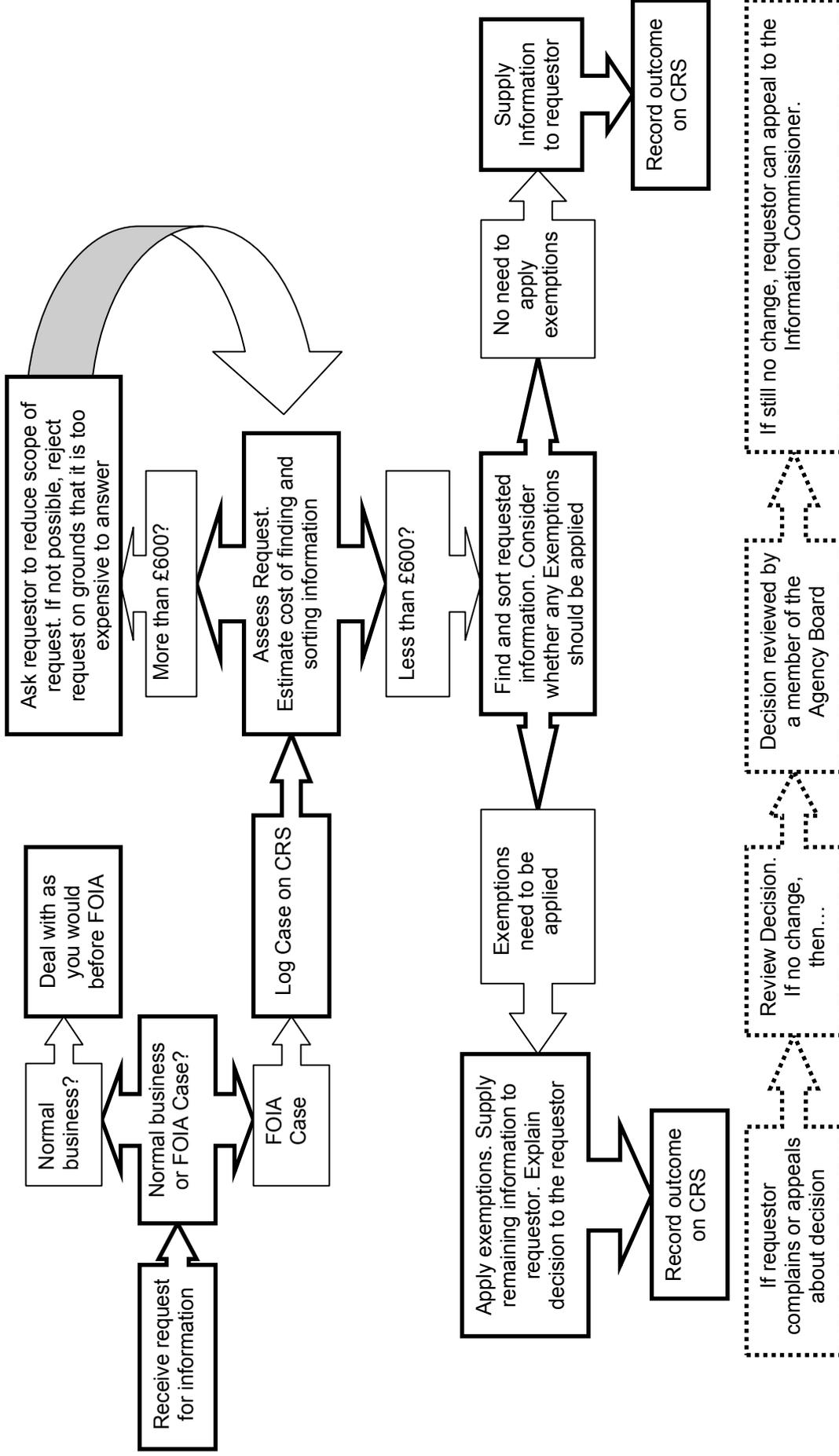
Answering FOI requests during a General Election

When a general election is called, FOI requests received within the Agency must be dealt with according to the legislation. During this period, there may be some occasions where the information requested could be sensitive in the context of an Election. Since disclosure of sensitive information could compromise, or be seen to compromise, the impartiality of the Civil Service, the papers relating to any such request must be copied to the **Permanent Secretary**. Papers in respect of emerging provisional decisions, whether they are to disclose or withhold the information must also be sent to the **Permanent Secretary**.

Any papers for the Permanent Secretary should be sent via your Divisional Director.

Simplified HA Process Map

(n.b. more comprehensive process maps are available on the Portal)



FoI Exemptions Most Relevant to HA

FoI Act Section	Exemption applies to information:	Absolute Exemption?	Public Interest test applies?	Duty to confirm or deny	Other key points
21	Is accessible by other means	Yes	No		
22	Is intended for future publication	No	Yes	Yes, unless to do so would release some of the information concerned prior to normal publication	An expanded Publication Scheme would help claim exemptions under this section
29	May damage the UK economy, or part of the UK economy, or the financial position of the Government	No	Yes	Yes, unless to do so would prejudice any pertinent matters	
34	Concerns Parliamentary privilege	Yes	No	Yes, unless to do so would infringe the privileges of either House	
35	Concerns the formulation of Government Policy	No	Yes	No	Statistical information used to provide an informed background to the decision is no longer exempt once the decision has been made – subject to a public interest test
36	Would prejudice the effective conduct of public affairs	Generally no	Yes	No	Requires the support of a Minister' reasonable opinion.
		But Yes for House of Commons & Hse of Lords	No	No	Statistical information does not require a ministerial view.
38	Would endanger the health and safety of any individual	No	Yes	Yes, unless to do so would endanger health and safety	

39	Covered by the Aarhus Convention and consequently addressed in regulations (environmental information)				Governed by Environmental Information regulations
40	Is personal	Yes	No	No	Covered by Data Protection Acts
41	Was provided in confidence, if a breach of that confidence would be actionable	Yes	No	Yes, unless to do so would breach the confidence	
43	Affects commercial interests	No	Yes	Yes, unless commercial interests will be harmed	
44	Is prohibited by any other Act or European legislation	Yes	No	Yes, unless to do so would be create an offence under any other Act or European legislation	
12*	That would cost more than the "appropriate limit" to provide	*		Yes – unless to do so would itself exceed the "appropriate limit"	Appropriate limit yet to be defined
14*	Where the request is vexatious or is a repeated request	*		No	Interpretation of "vexatious" not clear and is likely to be decided by case law.

*These do not describe a class of exempt information, but describe circumstances where a request for information can be refused.

FOIA Exemptions with Some relevance to HA

FoI Act Section	Exemption applies to information:	Absolute Exemption?	Public Interest test applies?	Duty to confirm or deny	Other key points
23	Is supplied by or relating to bodies dealing with security matters	Yes. Ministerial certificate required.	No	Yes, unless to do so would release some of the information concerned	
24	Affects National Security	No. Ministerial certificate required.	Yes	Yes, unless to do so would release some of the information concerned	
26	Defence	No	Yes	Yes, unless to do so would prejudice any pertinent matters	
27	May damage International Relations	No	Yes	Yes, unless to do so would prejudice any pertinent matters	
28	May damage relations within UK	No	Yes	Yes, unless to do so would prejudice any pertinent matters	
42	Covered by legal professional privilege	No	Yes	Yes, unless to do so would infringe legal privilege itself.	

FoI Exemptions of Little or No Relevance to HA

Section	Exemption applies to information:	Absolute Exemption?	Public Interest test applies?	Duty to confirm or deny	Other key points
30	Concerns investigations that might lead to someone being charged with an offence.	No	Yes	No	
31	Law enforcement	No	Yes	Yes, unless to do so would prejudice any pertinent matters	
32	Are Court records	Yes	No	No	
33	Concern Audit functions of one public authority on another	No	Yes	Yes, unless to do so would prejudice any pertinent matters	
37	Are communications with Her Majesty	No	Yes	No	

*These are not exemptions under Part II of the Act, but are set out in Part I of the Act. They do not describe exempt information, but describe circumstances where a request for information can be refused.