

**Ministry of Defence
Access to Information**

Guidance Note D10: Time allowed to respond to requests for information

1 What is the time limit for responding to a request for information?

1.1 For the majority of requests that warrant a reply under the FOI Act (s.10) or EIR, we have a **maximum** of 20 working days after the date of receipt in which to respond to the applicant. A substantive reply to the request should be sent out by the 20th working day, at the latest. As the Act states that information should be provided “promptly”, staff should not wait until the 20th working day before responding but do so as soon as possible.

1.2 A ‘working day’ means any day other than a Saturday, a Sunday or a UK bank holiday. Within the MOD it should be noted that ‘privilege days’ are classed as working days under the Act as are periods of locally arranged “close down”. The calculation of working days starts the day after the request first arrives anywhere in the MOD, not when it arrives with the member of staff best qualified to respond. This is why requests must be passed on promptly when the receiving branch does not have lead responsibility for the subject. The reply must be dispatched by the 20th working day, not received by the applicant on that day. However, the Information Commissioner has made it clear that he expects the majority of requests to be answered **earlier** in the 20 day period.

2 Business Continuity

2.1 Please remember that every working day counts for FOI purposes and it is therefore in everyone’s interests to ensure there is continuous coverage except during weekends and public holidays. FOI focal points and another staff likely to receive requests for information must ensure appropriate mechanisms are in place. These are:

- appoint a deputy;
- ensure the out-of-office facility for emails and telephone calls is switched on when absent and that it refers enquiries (or forwards them) to the deputy;
- ensure that Info Access have up to date information on your deputy’s name and contact details (email address and tel. no).

3 No extension for the following

3.1 You **must not** extend the 20 working day period because of:

- Inability to find the information within the time specified, or to establish whether or not the information is held: public authorities are expected to have efficient information management systems.
- Delay due to any staff absence. Local management procedures must include contingency plans to cover popular holiday periods and unexpected absence. All mail and emails should be opened during a colleague’s absence unless they have a privacy marking. (See Guidance Note A2, paragraph 2.9 Governance within MOD.)
- Time needed to get the request to the relevant member of staff.
- Deciding which regime applies
- Consulting with the DCA Clearing House
- Consulting third parties. (Although this may take place as part of a public interest test, or if they are abroad it may be possible to apply for an extension – see below.)
- Complexity of the request or the need to consider a large volume of information. (Although this may be valid in the case of environmental information – see below. Also refer to the guidance on excessive cost – see *Guidance Note D9: Charging.*)

4 Possible extension

4.1 Seeking Clarification

4.1.1 When there is a requirement to contact the applicant to clarify a request it is possible for the 'clock to be stopped' until the necessary clarification is received. Only the time between sending correspondence (letter or email) seeking clarification and receiving the reply may be counted. Applicants must be informed that work on their request will be suspended until clarification is received. In seeking clarification it is important to remember that MOD has a duty to provide advice and assistance. It will therefore be appropriate to help the applicant to be more specific about what they want. This should include explaining what information has already been published or can be made available. Do not seek clarification with a view to extending the time available for responding to the request. See Guidance Note *D3 Duty to provide advice and assistance*.

4.2 Considering the Public Interest

4.2.1 When considering the use of any qualified exemption it will be necessary to assess the public interest in releasing the information against the public interest in withholding it. (See Guidance Note *E4: Public Interest Test*) The aim should be to complete this assessment within the 20 working day period, but the Act acknowledges that this will not always be possible.

4.2.2 If it becomes clear that the assessment of public interest will take longer than 20 working days it is necessary to tell the applicant that we do hold the information that he/she has requested, but that we are considering whether it is appropriate to use a qualified exemption in relation to the request. This interim reply is a requirement of s.17 of the Act. It must state which exemption(s) are involved and explain that additional time is needed to consider the balance of public interest. This response should also specify a date by which we expect to be able to reach a decision and so answer the request fully. A template for this is available on the AIT. This interim response must be sent as early as possible within the 20 working day period. If the department exceeds the 20 working days in order to assess the public interest in releasing or withholding information then we must be prepared to justify the additional time taken to the Information Commissioner. Should a complaint be received, the Commissioner would review the reasons in order to make a decision as to whether the time taken was 'reasonable in the circumstances'

4.2.3 It is important to note that the 20 working day period **cannot** be extended if the information is clearly covered by an absolute exemption. In this case, the Act requires a decision to be reached within the basic statutory period. Although all EIR exceptions are public interest tested, NO additional time is allowed for applying the test.

4.3 Issuing a Fees Notice

4.3.1 If a fees notice is issued to an applicant then the clock is stopped until the fee is received. *Guidance Note D9: Charging* contains the details of this.

4.4 Request received Outside the UK

4.4.1 If a request is received at an MOD base outside the UK then the request should firstly be referred back to the FOI focal point in the UK to be logged on AIT via e-mail or fax as appropriate to ensure that no time is lost for responding to the request. If the receiving section is the policy lead on the request then they should continue to answer within 20 working days. If the request needs to be transferred to another part of the MOD for answering then this should be done via the toolkit, in the same way as if it had been received by another UK based part of the department.

4.5 Schools

4.5.1 Regulations under s.10(4) were enacted in November 2004 by the Secretary of State for Constitutional Affairs to make regulations to vary the normal 20 working day timescale in relation to particular cases. This allows that the time for compliance by nursery, primary and secondary schools, including those maintained by the Secretary of State for Defence, is either:

- (a) the 20th 'school day' following the date of receipt of the request, or
- (b) the 60th working day following receipt of the request,

whichever occurs first.

4.5.2 A 'school day' means any day on which the school is in session. It is important to note that this provision does **NOT** apply to all training establishments within the MOD. It is strictly limited to those schools which close during holiday periods and would therefore be unable to handle any requests for information.

4.6 Extensions allowed by Information Commissioner

4.6.1 Section 10(4) of the FOI Act empowers the Secretary of State for Constitutional Affairs to confer discretion on the Information Commissioner to agree a variation to the time for compliance and Regulations under s.10(4) were enacted in November 2004. There are two circumstances in which the Information Commissioner may be approached to ask for an extension to the 20 working day response period.

(i) Operations of the Armed Forces of the Crown

When it is not possible to respond to a request without obtaining information from an individual who is involved in an operation of the armed forces or the preparation for an operation, **and** this cannot be obtained in time to comply within the usual 20 working day limit. This extension will only be possible where the relevant individual is the **ONLY** person able to provide the required information. Good business continuity and records management procedures should minimise this occurrence. The Regulations make it possible to seek this time extension regardless of whether the individual involved in or preparing for an operation is a member of the Armed Forces or a civilian. The individual might be on deployment or working within the department – it is the nature of their role and responsibility at the time that will determine whether the provision applies.

(ii) Information held outside the United Kingdom

If a request relates to information that is not held in the UK, or requires information that is not held in the UK to be obtained in order to comply with it, **and** for that reason the department would not be able to obtain the information and respond within 20 working days,

4.6.2 In either of these circumstances it is possible to ask the Information Commissioner to use his discretion to specify a different time for compliance. This date will not be later than the 60th working day following receipt of the response and will be a day that the Information Commissioner considers reasonable in all the circumstances. **The Commissioner does not have to agree.**

4.6.3 It will be necessary for the department to approach to the Information Commissioner to explain the circumstances on a case by case basis and, against that specific background, to invite him to exercise his power of discretion. Responsibility for submitting any such request will rest with D Info Exp. **This must be done within 20 working days of receipt of the request** and any member of staff who believes it is necessary and appropriate to make a submission must contact Info Access as soon as possible.

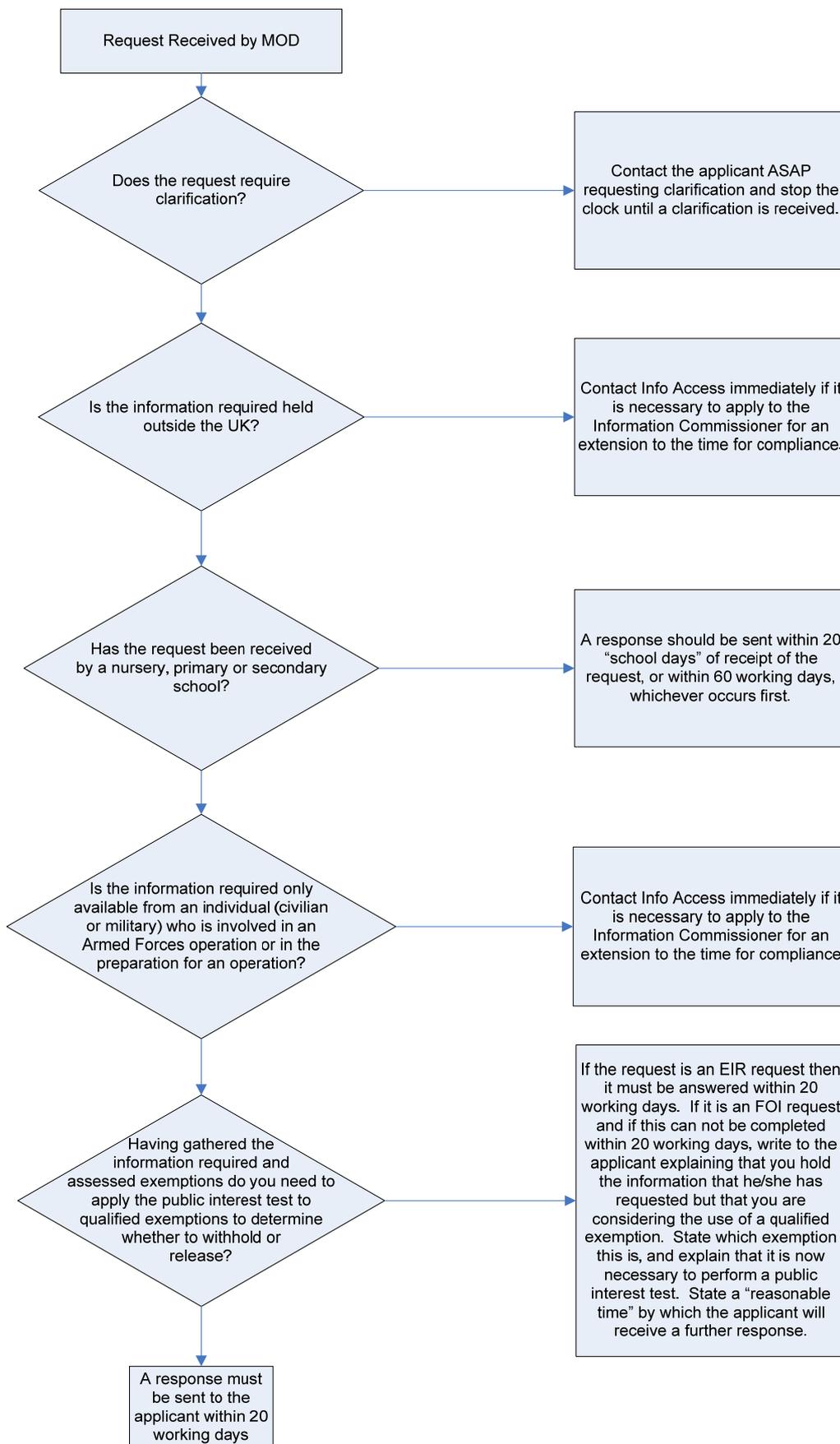
4.7 The National Archive

4.7.1 If a request is received which involves a record that has been transferred to The National Archive (or other places of deposit) but is **not** designated as open then we have a maximum period of 30 working days in which to respond to the request.

4.8 EIR allows all the above factors except it does NOT permit an extension to apply the public interest test. However, the EIR does allow up to 40 working days to answer a complex or voluminous request. A holding letter, similar to that for the public interest test, should be sent to the applicant giving a new response date. Since this may be appealed, it is important to be able to justify the circumstances which necessitated the extra time. See *Guidance Notes B3 and B4*.

4.9 DPA requests have to be answered within a 40 calendar day time period. Where a request under the DPA requires a fee or additional information to be able to fulfil the request then the 40 day period does not start until the fee and/or additional information has been received.

4.10 The flow chart below illustrates situations where a time extension may be permitted. Should further guidance be required, Info Access should be contacted as early in the process as possible.



NB – There is NO scope within the Act to extend the 20 working day period due to not being able to find the information, or having a heavy workload.