

FOI Reference 0300-14 – Digest of relevant information

Freedom of Information homepage

What is the Freedom of Information Act?

The Freedom of Information Act was fully implemented on 1 January 2005. It gives any person of any nationality the right to request access to official information held by public authorities. Information held by the FCO of any age, format and from any source can be requested. FOI requests **must be in writing** (letter/email/fax) and the deadline for responding to requests is **20 working days**.

The independent Information Commissioner oversees and enforces the Act.

What is an FOI request?

Any **written request for information** is technically an FOI request. But common sense is needed to divide requests for information into two sorts: those that are FOI, and those that are business as usual (BAU).

FOI requests:

These are requests for information, which go beyond the routine, business as usual questions that we normally deal with. These will include:

- The need to **search** for the information to answer the request (in Firecrest registry, paper files etc)

- Requests may involve **consultation with other public bodies** or with third parties

- Exemptions** or Public Interest Tests are considered

- Requests on issues which have a **high public profile**

- Requests which may relate to **financial interests**; and

- Requests which may be part of **an orchestrated campaign**

Business as usual (routine requests)

These are the straightforward requests for information that were dealt with as a matter of course before FOI came into force. This sort of correspondence simply asks for **information, which we already hold and make readily available**, for example asking for copies of **publications, contact details or routine enquiries** such as delivering press lines or treat official correspondence. These kinds of requests will continue to be dealt with according to the procedures you had before FOI: there is no need to fully engage FOI procedures or refer these kinds of requests to more senior staff.

Exemptions

There are **23 exemptions** to releasing information; including protection for information that would prejudice international relations, defence or the policy-making process or that was received in confidence.

The **public interest test applies to 15** of these exemptions. This means that information which is covered by one of these exemptions (for example international relations) will still have to be disclosed unless it can be successfully argued that the public interest in withholding it is **greater** than the public interest in releasing it.

The remaining 8 exemptions are absolute which means a public interest test is not necessary, such as personal information or information relating to bodies dealing with security matters.

The Ministry of Justice website provides detailed guidance on each of the exemptions.

Information Rights Team (IRT) has produced a summary table specific for the FCO.

Section	Exemption Title	Status	Application by FCO
21	Information accessible to the applicant by other means	Absolute	Applies to all
22	Information intended for future publication	Public Interest Test	Applies to all
23	Information supplied by, or relating to, bodies dealing with security matters	Absolute	Applies to all
24	National security	Public Interest Test	Applies to all
26	Defence	Public Interest Test	Applies to all
27	International relations	Public Interest Test	Applies to all
28	Relations within the United Kingdom	Public Interest Test	Does not apply to Historical Records
29	The economy	Public Interest Test	Applies to all
30	Investigations and proceedings conducted by public authorities	Public Interest Test	Does not apply to Historical Records (subsection 1 only)

31	Law enforcement	Public Interest Test	Applies to all (except records 100 years old)
32	Court records	Absolute	Does not apply to Historical Records
33	Audit functions	Public Interest Test	Does not apply to Historical Records
34	Parliamentary privilege	Absolute	Applies to all
35	Formulation of government policy	Public Interest Test	Does not apply to Historical Records
36	Prejudice to the effective conduct of public affairs	Absolute, if referring to information held by the Commons or Lords	Does not apply to Historical Records
37	Communications with Her Majesty and honours	Public Interest Test	Does not apply to Historical records (subsection 1a after 30 years, subsection 1b after 60 years)
38	Health and safety	Public Interest Test	Applies to all
39	Environmental information	Public Interest Test	Applies to all
40	Personal information	Absolute, if referring to subsection (1) and (2)	Applies to all
41	Information provided in confidence	Absolute	Applies to all
42	Legal professional privilege	Public Interest Test	Does not apply to historical Records
43	Commercial interests	Public Interest Test	Does not apply to historical Records
44	Prohibitions on disclosure	Absolute	Applies to all

Authority to Release homepage

[Redacted under section 36]

You should refer to Ministers for approval in the following cases -

Requests where you are seeking to rely on s.36 – the Minister, as the qualified person, must approve your use of s.36

[Redacted under section 36]

The following cases should not be referred to Ministers:

Requests for papers from a previous administration of a different political colour. These should be referred to the PUS. If you need to use s.36 in relation to such papers you need to refer the case to the Attorney General as the qualified person.

Applying the Freedom of Information Act Homepage

FCO Guidance and Working Assumptions

The Ministry of Justice (MoJ) have issued a comprehensive set of Whitehall-wide Working Assumptions. The following is not designed to replace MoJ's Working Assumptions, which provide fuller guidance and should be referred to if in doubt.

However, given the particular nature of the information that the FCO holds, you might find the following FCO-specific working assumptions a useful addition.

All information identified as relevant to an FOI request must be looked at on a case by case basis in order to assess whether it should be disclosed or not. The following guidance and working assumptions should help you form a judgement on what information to release, and how to apply the public interest test correctly. Some of these are general principles that may seem obvious: others are indicators to the practical implementation of the FOI Act. There are exceptions to each of them, but they are a useful starting point. If in doubt, you should contact the FOI and DPA (Casework) Team.

1. Protecting Sensitive Information

The nature of the FCO's business means that it handles a great deal of sensitive information that may be damaging if disclosed.

This is not a defensive argument, but one that is generally accepted by the Information Commissioner, the media and the general public. Such information might include:

confidential information received from individuals or governments overseas;
reports on the progress of ongoing negotiations, bilateral or multilateral, whether or not the UK is a party to them;

advice from diplomatic representatives overseas, or from officials in London, that may contribute to the formulation of policy;

information containing personal information on individuals (e.g. consular information);

procurement, contracts or related commercially sensitive information.

The FOI Act affords a high degree of protection for this sort of information for example:

The international relations exemption in section 27 can be used justifiably and widely to protect international relations, particularly in relation to recent reporting.

The comment contained in much diplomatic reporting will often also constitute policy formulation protected under section 35.

Section 36 can be used to protect from disclosure any information the release of which would or would be likely to prejudice the full and frank exchange of opinions. (Note that sections 35 and 36 cannot be used in relation to the same information as they are mutually exclusive - although if there is some doubt as to which of them applies, they can be cited in the alternative).

Section 43 applies to the protection of commercially sensitive information, or information the release of which would harm the commercial interests of any body, including the UK.

All these exemptions are subject to a public interest balancing test. However, where we can demonstrate likely prejudice to the UK's international relations, cases of an overriding public interest weighing in favour of disclosure are likely to be the exception rather than the rule.

2. Older Information

Older information is, as a general rule, more likely to be released than more recent information.

The public interest in withholding information, the release of which would be likely to have a prejudicial effect, is likely to be stronger in relation to more recent information. It is not possible to put any precise date on this - we cannot say that anything less than 10 years old would not be disclosed, for example - but clearly the closer the document gets to 30 years old (the point at which it would probably be transferred to The National Archives (TNA)) the less likely it is to be sensitive. Bear in mind that less than 1% of FCO material has been withheld from files transferred to TNA at the 30-year point.

3. Some information is of ongoing sensitivity, however old it is.

Some information relating to certain parts of the world, and to some issues, remains sensitive for longer.

[Redacted under section 36]

4. Diplomatic reporting

Most diplomatic reporting telegrams, teletexts, despatches and egrams from Posts are likely to include a good deal of information falling within exemptions.

Comment and recommendations that relate to the formulation or development of government policy - section 35.

Comment and reporting that could not be so candid if it were routinely disclosable - section 36 (which requires the approval of a Minister).

Comment and reporting that would be likely to prejudice international relations if disclosed - section 27(1).

Information provided in confidence by companies and individuals - section 41.

Personal information about individuals in their **private** capacity -section 40.

Commercially confidential information - section 43.

Information supplied by, or relating to, the intelligence agencies - section 23.

All of the above exemptions except sections 23,40 and 41 are subject to a public interest test.

Purely factual reporting that does not fall within any of the above categories is unlikely to be exempt. Some reporting will also include material that is already in the public domain and/or reasonably accessible to the applicant by other means (section 21).

[Redacted under section 36]

5. Information obtained in confidence

Information obtained in confidence from other governments or international organisations.

Consult the government or organisation if there is doubt as to whether the information is confidential or their attitude to disclosure. If necessary, cite section 27(2) and inform the applicant that you are extending the time for considering the public interest.

If, having been consulted, the government or organisation concerned objects to disclosure, or if, in the absence of consultation the circumstances make it reasonable to assume that they would object to disclosure, withhold citing the exemption under section 27(2).

6. Despatches

The case-by-case approach to release of diplomatic reporting means that there is no blanket assumption against releasing whole documents, such as despatches, of any age. [Redacted under section 36]

As a general rule the older the document, the more releasable as a whole it is likely to be. Equally there may be other 20 or 25 year old diplomatic reporting documents that we should not release in part or at all, if it was likely to harm international relations or if it contained still sensitive policy advice.

7. The public interest test

Information must be disclosed unless we can reasonably conclude that the public interest in maintaining the exemption is greater than the public interest in releasing it. This is very much a matter of applying common sense and judgement in considering the factors for and against disclosure. Guidance on the application of the public interest test for each exemption is available on the MoJ website.

For example, although each request must be considered on its merits, the public interest in maintaining the international relations exemption under s.27 is likely to be strong where we judge that prejudice is likely to occur. So for example, where the disclosure of the information would significantly weaken the UK's bargaining position in international negotiations inhibit other governments' willingness to share sensitive information with the UK and/or inhibit frankness and candour in diplomatic reporting.

[Redacted under section 36]

8. Follow the principle of “minimum redaction”

[Redacted under section 36]

The FOI access right is to information, not to particular documents. The best way to provide this may not be by disclosing documents themselves: a letter giving the requested information, or attaching it in the form of a digest, may, however, be more helpful and likely to be quicker.

Where a decision has been taken to release information, you should make it clear to the applicant where redactions have been made or where further information is being withheld in order to avoid misleading him or her about what is actually being released, and cite the exemptions as appropriate. This will be obvious in the case of redacted copies of original documents, but less so in electronically stored material or in digests. You can use dotted lines or square brackets to indicate where material has been removed in, for example, a digest.

9. Cost Threshold

[Redacted under section 36]

10. File Lists and information in the form of a list

There is no presumption against disclosure of file lists themselves. Exemptions can, however, apply to the information in the file title in the same way as they can apply to any other form of information. So, file lists are not necessarily exempt; it will depend on the file titles. If you do not hold lists or the information in the form requested, you are only obliged to create this if to do so is “reasonably practical”. The Act does not require you to generate new information in order to respond to a request. [Redacted under section 36]

11. Complete files

Requests for complete files should be treated in the same way as any other request and you should consider whether the cost limit would be exceeded and what, if any, exemptions apply.

12. Names of Officials/Ministers

The summary below is intended as a guide to the basic principles. In cases of doubt please refer to IRT, who will if necessary consult with MoJ.

(i) Often the identity of individual officials is not relevant to the request for information the names do not need to be disclosed, and therefore there is no need to rely on exemptions in withholding them.

(ii) Section 40 (personal information) is not considered to provide blanket grounds for withholding officials' names, although it will sometimes apply.

(iii) More often section 36 will be the relevant exemption as indicated below:

Disclosure would be likely to undermine the convention that ministers are collectively responsible for policy decisions. If so, section 36(2)(a)(i) may apply;

Disclosure would be likely to inhibit the free and frank provision of advice/exchange of views for the purpose of deliberation, in which case section 36(2)(b) may apply;

Disclosure would be likely to lead to disruption to the Office's business (e.g. through harassment of a particular official) to such an extent that the effective conduct of the FCO's business in a particular area would be likely to be prejudiced, in which case section 36(2)(c) may apply;

The official's identity is part of information relating to the formulation or development of government policy and one of the factors above applies. If so section 35(1)(a) rather than section 36 may apply. If the information relates to the individual in a clearly private capacity rather than an official capacity (e.g. application for early retirement), then section 40 will apply if disclosure would be unfair to the individual;

If release of the information would be likely to endanger the safety or health of the individual, then section 38 may apply.

Each of these exemptions, except section 40, is subject to the public interest test.

13. Legal Advice

[Redacted under section 36] Legal advice itself should normally be withheld citing section 35(1)(a) or section 42(1). [Redacted under section 36]

14. Policy Advice

The MoJ's working assumption on policy advice is that advice to Ministers on policy, e.g. a submission asking for a decision on a question of policy, outlining an emerging policy, advising on on-going policy work etc, should be withheld under section 35(1)(a) (formulation of Government policy) given the strong public interest in protecting the policy formulation process. Other exemptions may also apply.

[Redacted under section 36]

15. Policy Advice

[Redacted under section 36]

[Redacted under section 23]

16. Oral Parliamentary Questions

The assumption is that the request for information has been received after the PQ session. Requests for information before a PQ Session should be referred to the Clearing House.

The initial answer to the tabled question, answers given by the Minister during the PQ session and any factual biographical information about the MP or Peer asking the question from published sources may be released.

[Redacted under section 36]

17. Written Parliamentary Questions

Remember the FOI Act gives access to information, not documents. Where the working assumption is to release, any factual information for release should be removed from the context of the PQ briefing pack before being sent to the applicant.

The written answer and any factual biographical information about the MP or Peer asking the question should be released. Background factual and statistical material about the policy area and answer should also be released. [Redacted under section 36]

18. Press Lines and Communication Advice

Press lines to take should be released.

Draft or contingent press lines (i.e. "if asked") as well as communications advice (advice to ministers on what can and cannot be publicly stated about a policy) should be withheld citing exemption 36(2)(b)(i) (prejudice to the effective conduct of public affairs - - free and frank advice.)

19. Keep the Press Office informed

You must ensure that Press Office is made aware of potentially contentious or high profile requests right from the start. If you are unsure whether a request is likely to be newsworthy **err on the side of caution and let the Press Office know immediately as their views will be crucial to the eventual wording and handling of any response.** This will include ALL requests from a journalist, or someone you

think might be connected with the media. Follow this up by copying correspondence on proposed action, arrangements for meetings to discuss handling, all submissions, draft and final responses as a matter of course.

20. FCO Ministers' Communications

Requests for information concerning ministerial correspondence between Ministers, Ministerial correspondence with third parties on policy issues, and notes of Ministerial meetings should be referred to MoJ to ensure consistency across Whitehall. The Minister's Private Office should be consulted, particularly where the issue is sensitive. The basic working assumption is that this type of information should be withheld under section 35.

21. Papers of a previous Administration

[redacted under section 36]

22. Correspondence with the enquirer

It is important to manage expectations by keeping the applicant in the picture about the progress of his enquiry. In some cases it may be necessary to extend the deadline to allow further consideration of the balance of the public interest. Where this is the case, a public interest test (PIT) letter must be sent to the applicant before the expiry of the 20-day period confirming that the FCO holds information relevant to the request, confirming whether any information is being held under any absolute exemptions (specifying what these are and why they apply), and specifying the relevant qualified exemption, saying why it applies, and giving an estimate of the date by which the decision will be made in relation to the public interest. Any non-exempt information relevant to the enquiry should be disclosed at the same time as the PIT letter is sent. [Redacted under section 36]

Never seek to extend a deadline informally. Always ensure that an extension is covered by a PIT letter to the applicant.

23. Clearing House Triggers

There are several types of request that must be referred to the MoJ Clearing House for central co-ordination and to ensure consistency in the terms of the response. If you believe you have received one of these requests you should immediately contact IRT, who are responsible for liaison with the Clearing House. [Redacted under section 36]

The Clearing House will not answer requests on behalf of the FCO or other Whitehall Departments, with whom responsibility for doing so lies. But it will provide advice on difficult cases. Posts or Departments must not contact the Clearing House directly. It is for IRT to make the initial contact with MoJ about a referral. However, IRT will make sure that thereafter, Post/Department is the first point of contact with IRT copied into all correspondence.

24. Submissions to FCO Ministers: Section 36 authority

When submitting to Ministers seeking authority to withhold under section 36, originators **must** ensure that the Minister has the opportunity to make his own

assessment of the information that is to be **exempted**, along with that which it is proposed to **release**. It is not enough simply to include a reference to the type of information in the body of the submission, such as "exchanges between officials and advice to Ministers".

That means that, where the volume of information is very small, copies of the exempted documents themselves should be attached; where it is large, or voluminous you must liaise with Private Offices to agree on how best to provide the Minister with the material to be withheld.

This needs to be done because we are asking the Minister to confirm that, in his reasonable opinion, as a qualified person under the Act, specific information is exempt under s36, and he cannot properly do that without having the opportunity to form his own view of what that information consists of. If there is nothing accompanying the submission to enable him to do that, and the case subsequently goes to the Information Commissioner, it could reasonably be argued that the Minister's decision was based on an incomplete assessment of the information and that he could not, therefore, have reached the reasonable conclusion that the exemption was engaged.

25. Diaries of Ministers, Heads of Posts and Senior Officials

[redacted under section 36]

b) For consideration on case-by-case basis when request is made;

Meetings with individuals or individual companies. A number of exemptions may be applicable depending on the context, for example, section 36 (prejudice to the effective conduct of public affairs) or section 43 (commercial interest).

c) Non-disclosure should be considered

All future engagements (except where they have been formally advertised or announced e.g. speaking engagements etc.).

Internal or inter-departmental meetings with ministers and/ or officials (section 35 (formulation of government policy) or section 36 (prejudice to the effective conduct of public affairs) and/or section 40 (personal information). (In practice, section 40 is unlikely to be relevant in the majority of circumstances where the ID of an official is at issue. Therefore if it applies, it is most likely to do so in relation to personal data of third parties rather than of the government ministers/officials).

d) information 'not held' for the purposes of the FOI Act;

Political, constituency and personal meetings. Where a meeting might be considered political, the test will be whether a Minister attended the meeting in a Ministerial or Party capacity. Similarly Heads of Mission and Senior officials can determine which diary information might be considered personal and may be able to rely on section 40 (personal information) to protect the information.

26. Guidance on internal handling of Information Commissioner Office's cases

The following guidance is designed to assist OGLOs in dealing with the Information Commissioner Office's cases, which, by definition, require careful and prompt handling. Specific points are set out below:

IRT will handle all FCO Information Commissioner's Office (ICO) complaint cases centrally. It follows that all such enquiries should be directed to IRT in the first instance who will then co-ordinate the response with the appropriate department.

IRT will refer all ICO complaint cases to the MoJ, as required under Clearing House rules

All responses to the ICO should be signed off by the Head of the Department dealing with the response prior to being sent to the Head or Deputy Head of IRT for final processing. IRT will clear it through their Legal Adviser.

The Head of IRT and the Director of the Directorate of Strategy and Information will be routinely informed of all ICO cases, and briefed on any that are sensitive or where there is likely to be an adverse decision, before the FCO response is sent. Attention of other Directors, PUS and Ministers will be drawn to cases and draft replies cleared with them as appropriate.

2. IRT's wider perspective of the FOI regime makes it best placed to ensure consistency of quality control at the final critical appraisal stage, consulting Directorates as appropriate. The Deputy Head of IRT will act as the FCO contact point co-ordinating the handling of all replies.

3. Key Principles of the relationship between the ICO and FCO are:

the ICO will provide us with details of the complaint, invite comments on the case, and ask us to provide all relevant information.

we have 20 working days to provide all the material requested, including redacted material. We should provide any additional relevant material requested by the ICO as quickly as possible and, in any event, within 10 working days of it being requested.

where appropriate the ICO may decide to send a representative to us to inspect material which is particularly sensitive, voluminous, or where technical explanations might be required, rather than ask for it to be sent to him.

The ICO will keep IRT informed of developments in the ICO's consideration of a complaint

the ICO will try to negotiate a settlement acceptable to each side wherever possible

[Redacted under section 36]

4. Thereafter, either side has 28 calendar days to appeal the ICO's decision to the Information Tribunal. An appeal to the High Court is available where a point of law is at issue.

27. Papers prepared for meeting of Cabinet Committees

Any papers prepared for, or relating to, meetings of the Cabinet or Cabinet Committees. The working assumption is to **withhold** citing s.35(1)(a) or (b) (formulation of government policy); or s.36(2)(a)(i) (prejudice to the effective conduct of public affairs).

28. Information from a foreign government or international organisation

Information (in any form) obtained, in confidence, from a foreign government or international organisation. The working assumption is that if, having been consulted, the State or organisation concerned objects to disclosure or if, in the absence of consultation, the circumstance make it reasonable to assume that the State or organisation would object to disclosure **withhold**, citing exemption under s.27(2) of the Act (international relations).

29. Ministerial expenses for official government business

Ministerial expenses incurred in the course of official Government business, including the cost of entertainment (e.g. hosting dinners); overseas visits; mobile phone bills and use of official cars etc. The working assumption for information held about Ministerial expenses incurred as part of official Government business - **release**, answering factually.

30. Procurement Information

The procurement information working assumptions are broken down by procurement phase, in Annexes as follows:

One - Requests for procurement information made after a contract has been let and during the delivery of the contract

Two - Requests for procurements information made after requests for tender have been issued, but before the selection of the preferred bidder

Three - Requests for procurement information made before invitations to bid have been issued

Four - Requests for procurement information or for commercial market information made after a contract has been delivered, or made outside the procurement process.

31. Gateway Review information

Major acquisition programmes and procurements projects in civil central government are subject to OGC Gateway Reviews. These are carried out at key decision points by a team of experienced people, independent of the programme/project team. Where a request for information relating to Gateway Review (whether or not the Department is holding the papers) is received the Clearing House should be alerted. The working assumption is as follows:

Information on whether or not a Gateway Review has been carried out - **release**

Basic Review information - version number, date of issue, department and review dates - **release**

Names of Review Team Leader and Members - **withhold**

Background including aim of the project, reasons/objective for the project, etc - **release**

Purpose and conduct of the Review - **release**

List of documents reviewed - **release**

Conclusion and Summary of finding; Findings and recommendations; Red Amber Green (RAG) Status; List of interviewees; Summary of recommendations - withhold citing s33 (and possibly s35 or s36).

32. Public appointments/senior civil service appointments

Any information relating to public appointments or senior civil service appointments, including information about candidates or possible candidates. Details of the methodology of the appointment or recruitment exercise, including job specifications, selection criteria and assessment of candidates.

The working assumption is as follows:

Release - Information, other than personal data, relating to the selection exercise, including job specifications, advertising and selection criteria, types of questions asked and anonymised statistical information on the results of the exercise, such as how many people applied and how many were interviewed.

Withhold - Personal data and any information which might identify candidates or potential candidates, including notes made of interviews and assessments of candidates. Recommendations made to Ministers and details of processes which might lead to identification of candidates or potential candidates.

Dealing with Freedom of Information requests

When you first receive the request - **Act immediately.**

Any requests for recorded information received in London or overseas, should be sent to the DP-FOI inbox as soon as possible. The Information Rights Team in IMD will determine whether a request will be treated under the Freedom of Information Act (FOIA) or as Business as Usual (BAU). They will log and acknowledge all FOI requests and then forward the request to the appropriate desk for them to reply.

Appropriate Desk

Once IRT log and acknowledge a request, they send an email to the lead department giving the name of the case manager in the Information Rights Team and a deadline for replying to the request. The department must ensure that they copy the case manager in to all correspondence regarding the case.

Departments will lead on all requests for information that are less than 30 years old. If the information requested is more than four years old, then the department (desk officer) will need to contact IMD-Retrieval Team at Hanslope Park. The Retrieval team will liaise with the department and send any relevant information to the desk officer. If having read the request you feel that it is not your department's lead, please return to IRT, stating the reason and if possible, which department should have the lead in responding.

If the request covers information held by more than one department or Post then the department with the most information would lead. The department with the least information will need to be involved throughout the case and provide as much help to the lead department as possible.

If it is for material held by another government department, write to the enquirer and ask them to transfer their request to the relevant body. IRT can provide you with details of FOI experts in OGDs so you can pass the details to your enquirer. You can only do this if we do not hold any relevant information at all.

Requests received by overseas posts must be sent to the DP-FOI inbox as soon as possible. Applications made to Posts citing FOI should be referred to London in order to bring them within the scope of the Act (and in particular its review procedures).

The request will be allocated to a London desk to lead on and OGLOs at Post will be contacted to search for information they hold that is of relevance to the request. In some circumstances case handling may be delegated to Posts, but in all cases, central oversight will be maintained.

[Redacted under section 36]

The FCO is a public authority and we are **legally obliged** to deal with all FOI requests in the appropriate manner. The law requires us to reply within **20 working days** from the date the request arrives in the FCO (requests received overseas maybe treated differently).

Requests received overseas

If an OGLO or case handler at Post receives an FOI request, it must be sent to the FCO FOI Team inbox at foi-dpa.imd@fco.gov.uk for processing. Applications made to Posts citing FOI should be referred to London ASAP in order to bring them within the scope of the Act (and in particular its review procedures).

Posts should send the request to the FOI and DPA Team to process. Please let the enquirer know that you have forwarded their request. OGLOs at Post will still be contacted to search for information they hold that is of relevance to the request. In some circumstances case handling may be delegated to Posts, but in all cases central oversight will be maintained.

The 20 day deadline for the request will be counted from the first working day after the request was received at post. it should be forwarded to the FOI and DPA Team ASAP, and certainly no more than two working days after receipt.

In some complex cases involving difficult public interest test considerations the 20 working day deadline can be extended, **within reason**. The clock starts ticking...

Read the request thoroughly and check that you understand **exactly** what the requester is actually asking for. If you are not sure, inform your IMD Case Manager, as you may need to go back to the requester to seek clarification.

Clarification

By virtue of Section 1(3) of the Freedom of Information Act, a request must be clear enough for you to be able to identify and locate the information asked for:

1. (3) *Where a public authority –
 - (a) Reasonably requires further information in order to identify and locate the information requested, and
 - (b) Has informed the applicant of that requirement,the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.*

If the request is not clear then you do not have to comply with it. However, because of the duty to give advice and assistance (s.16):

16 (1) It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.

If a request needs clarification, you will need to inform the requester by letter and suggest how they can clarify the request. The letter has to be **cleared by IRT** before it is issued. Once issued, the request is suspended and the 20 working day “clock” stops. This only starts again when the requester replies. Departments should identify whether the request needs clarification within 3 days of receiving the request.

Reasons for clarifying:

The request is unclear – the department requires clarification to ascertain what the enquirer actually wants.

Impossibility of the request – it is too vague and broad. In such cases, you will need to contact the enquirer to ask them to narrow their request. If they cannot narrow down the search, then the request may exceed the appropriate limit.

Remember: FOIA is purpose blind, so do not try to ascertain the motivation of the enquirer.

Example of a letter asking for clarification:

Dear

I am writing regarding your request for information, which I received on [date]. In that request, you asked us for [outline of request]

[As discussed by email/telephone] I will be unable to proceed with your request without clarification of the information you wish to receive. To help us do so, I would like to know [specific question].

Please note that if I do not receive appropriate clarification of your information requirements within 20 working days from the date of this letter, then I will consider your request closed.

If you wish to discuss any of the above, please contact me. Please remember to quote the reference number above in any future communications.

Yours etc

[Name, address, email address and telephone number of issuing officer]

Check if your department is the appropriate one to deal with the request. If not, inform your IMD Case Manager immediately.

Print of a copy of the checklist and escalation process

Log the details of the request onto your departmental FOI spreadsheet.

Create paper and electronic files for **all** correspondence relevant to request

Pass the request to the relevant Desk Officer.

Advise your IMD case manager who the desk officer dealing with the request is.

Relevant Search

If request is for information over 4 years old ensure a copy of the request is sent to Retrievals in Hanslope Park with as much additional advice as possible to assist in the search

If the search for information looks likely to exceed £600 limit, contact IMD for advice.

Cost Limit

FOI requests are free for the enquirer until a limit of £600 for complying with the request is reached. If it would cost us more than £600 to respond to an FOI request, then we need not comply with it. This will be based on the mechanism of **charging an hourly rate of £25 for responding to the request**. This works out to around 3½ days of work.

The £600 limit covers the time taken to determine whether we hold the information and locating, retrieving and extracting the material. **It does not cover the time taken to consider whether an exemption applies or the balance of the public interest.**

Below are a number of different letter templates, informing a requester/s that to comply with their FOI request would exceed the appropriate cost limit.

Dear

I am writing regarding your request for information, which we received on XX
XXXXXXXX XXXX. In that request, you asked us for:

XXXXXXXXXX

The FCO does hold some relevant information within the description specified in your request. However, we estimate that the cost of complying with your request would greatly exceed the appropriate limit of £600. The appropriate limit has been specified in regulations and for central Government it is set at £600. This represents the estimated cost of one person spending 3½ working days in determining whether the Department holds the information, and locating, retrieving and extracting the information. Under section 12 of the Freedom of Information Act the Department is not obliged to comply with your request and we will not be processing your request further.

If you were to make a new request for a narrower category of information, it may be that we could comply with that request within the appropriate limit, although I cannot guarantee that this will be the case. It may help if I outline some possible ways of narrowing your request. You may wish to specify information regarding xxxxxxxx, and/or specify a much narrower time frame, and/or make reference to a specific aspect of xxxxxxxx.

Any reformulated request the department receives from you will be treated as a fresh Freedom of Information request.

If you are unhappy with the service you have received in relation to your request and wish to make a complaint or request a review of our decision, you should write to me. You have 40 working days to do so.

If you are not content with the outcome of your complaint, you may apply directly to the Information Commissioner for a decision. Generally, the Information Commissioner cannot make a decision unless you have exhausted the complaints procedure provided by the FCO. The Information Commissioner can be contacted at:

Information Commissioner's Office,

Wycliffe House

Water Lane

Wilmslow

Cheshire

SK9 5AF

Two or more requests received from the same requester

Dear XXXXXXXX

FREEDOM OF INFORMATION (FOI) REQUESTS

Thank you for your FOI requests dated XX XXXXX XXXX. I have attached a list of your FOI requests along with their individual reference numbers

Or

You asked for:

XXXXXXXXXXXX

Although the Foreign and Commonwealth Office does hold the information you have requested, Section 12 of the Freedom of Information Act makes provision for public authorities to refuse requests for information where the cost of dealing with them would exceed the appropriate limit, and Regulation 5 provides that where an authority receives two or more requests from the same person on the same or similar subjects, made within 60 working days of each other, that the costs of answering these requests may be aggregated. The appropriate limit for central Government is set at £600, which represents the estimated cost of one person spending 3 ½ working days in determining whether the Department holds the information, and locating, retrieving and extracting the information.

As presently formulated we estimate that it will take one person more than 3 ½ working days to locate, retrieve and extract the information you have requested.

In these circumstances, we are not obliged under the FOIA to comply with your request. You may therefore wish to refine your request(s) to take it below the limit.

If you were to make a new request for a narrower category of information, it may be that we could comply with that request within the appropriate limit, although I cannot

guarantee that this will be the case. It may help if I outline some possible ways of narrowing your request. You may wish to specify information regarding XXXXX and its dealings with a particular country, and/or specify a much narrower time frame, and/or make reference to a specific aspect of XXXXXX activities.

Any reformulated request the department receives from you will be treated as a fresh Freedom of Information request.

If you are unhappy with the service you have received in relation to your request and wish to make a complaint or request an internal review, you should write to me. You have 40 working days to do so.

If you are not content with the outcome of the internal review, you may apply directly to the Information Commissioner for a decision. Generally, the ICO cannot make a decision unless you have exhausted the complaints procedure provided by the FCO. The Information Commissioner can be contacted at:

The Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Two or more requests received from two or more requesters:

Dear

Thank you for your FOI request dated XX XXXXX XXXX. You asked for:

XXXXXXXXXXXXXXXX

We note, that we have received a similar request from another requester. Although the FCO does hold information relevant to your request, Section 12 of the FOI Act makes provision for public authorities to refuse requests for information where the cost of dealing with them would exceed the appropriate limit, and Regulation 5 provides that where an authority receives two or more requests from different persons who appear to the public authority to be acting in concert, made within 60 working days of each other, that the costs of answering these requests may be aggregated. The appropriate limit for central Government is set at £600, which represents the estimated cost of one person spending 3 ½ working days in determining whether the Department holds the information, and locating, retrieving and extracting the information.

As presently formulated we estimate that it will take one person more than 3 ½ working days to locate, retrieve and extract the information that has been requested.

In these circumstances, we are not obliged under the FOI Act to comply with your request. You may therefore wish to refine your request(s) to take it below the limit. If you were to make a new request for a narrower category of information, it may be that we can comply with that request within the appropriate limit, although I cannot guarantee that this will be the case. It may help if I outline some possible ways of narrowing your request. You may wish to specify information regarding XXXXX and

its dealings with a particular country, and/or specify a much narrower time frame, and/or make reference to a specific aspect of XXXXXX activities.

If you have any queries about this letter, please contact me. Please remember to quote the reference number above in any future communications.

If you are unhappy with the service you have received in relation to your request and wish to make a complaint or request an internal review, you should write to me. You have 40 working days to do so.

If you are not content with the outcome of the internal review, you may apply directly to the Information Commissioner for a decision. Generally, the ICO cannot make a decision unless you have exhausted the complaints procedure provided by the FCO. The Information Commissioner can be contacted at:

The Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Assessing Information

Assessing material relevant to request

Once you have gathered together the relevant material you must assess it all for release – line by line in some cases. You may find it useful to attach an assessment slip to the information you are assessing. This will indicate what documents you have looked at and the use of exemptions.

Classification:

Remember – **FOI is classification blind**. Protective Markings and descriptors (e.g. Restricted, Confidential) dictate how information is stored, copied and communicated within the FCO, but it does not mean that it is necessarily exempt from the right of access under FOI. However, a classification may provide an indication that an exemption may apply to some or all of the contents within that document. In order to ascertain whether protectively marked information falls within an exemption, consideration must be given to the sensitivity of the information at the time of a request for disclosure and whether any prejudice is likely to arise from its release at that time.

If the material you are consulting has been given a classification and you are unsure or unwilling to take the responsibility of de-classifying material for release, **always** ask. Contact your deputy head/head of department or IRT for assistance. It is also good practice to indicate, in some form, that the material you are releasing has been released under FOI, so it is clear that its disclosure has been authorised. Please therefore attach a notice of release to the front of the file.

[Redacted under section 36]

[Redacted under section 23]

Consulting foreign governments:

If any of the material you assess is from a foreign government you should contact IRT immediately. FOI covers information received from other jurisdictions, but we will often need to refer the information to the originating government to check their opinion on its release. There is an exemption to protect confidential information supplied by foreign governments or information the disclosure of which would prejudice our relations with another State.

FOI requests seeking information about Procurement or Contracts:

FOI requests may ask for information relating to procurement, contracts or related commercially sensitive information. These should be answered in accordance with the [FOI \(Civil Procurement\) Policy and Guidance](#) issued by the Office of Government Commerce (OGC). Also there is a WA on procurement.

The document provides general guidance on FOI procurement issues, states policy on the application of key aspects of FOI to inform decision making, and as a starting point suggests default disclosure decisions i.e. “procurement related Working Assumptions”.

Please consult IRT and Procurement Policy Department (PPD) via their departmental OGLO if you have any queries about the application of this guidance (a list of all OGLOs is available on the FCO Directory).

Deadlines

The statutory deadline for replying to FOI requests is 20 working days (working days are all days except Saturdays and Sundays, Christmas Day and Good Friday, and Bank Holidays in the UK as set out in the Banking and Financial Services Act 1971. Local holidays overseas are classed as working days. Civil service ‘privilege days’ **do** count as working days. The Act makes a limited number of provisions for extra time to be taken in responding to a request. These provisions are as follows:

Applying the Public Interest Test

If the information being sought has to be considered under an exemption to which the public interest test applies then the 20 working day deadline can be extended by a 'reasonable period'. There is no statutory time limit on how long the 'reasonable period' may be, but an estimate of the date by which you expect to reach such a decision must be given to the enquirer.

If you anticipate you will exceed the estimated time you gave to the enquirer, you should explain to the enquirer the reason for the delay and extend the deadline again.

Special cases

Under Section 10(4) of the Act, the FCO can extend the 20 working day deadline to **60 working days** if it is necessary consult posts, governments or companies' abroad

to obtain information. However this has to be done through the Information Commissioner's Office. Therefore, if you require an extension, please contact IRT.

Assessing whether information should or should not be released is a delicate decision, which may take longer than originally anticipated to decide.

Use the checklist to ensure that all considerations are taken into account while assessing material to decide whether or not to release it, discount any information not relevant to the request.

Checklist: dealing with Freedom of Information (FOI) requests – Initial request

When you first receive the request

Don't ignore it. The FCO is a public authority and we are **legally obliged** to deal with all FOI requests in the appropriate manner. The law requires us to reply within **20 working days** from the date the request arrives in the FCO and IRT needs the cleared draft within **15 working days** to ensure this deadline is met. In some complex cases involving difficult public interest test considerations the 20 working day deadline may be extended **within reason**. The clock starts ticking...

Read the request thoroughly and check that you understand **exactly** what the requester is actually asking for. If you're not sure, inform your IRT Case Manager as you may need to go back to the requester to seek clarification

Check if your department is the appropriate one to deal with the request. If not, inform your IRT Case Manager immediately.

Enter details of request onto your departmental FOI spreadsheet (an example of a spreadsheet is available on the intranet)

Create electronic and paper case file for **all** correspondence relevant to request

Pass the request to the relevant Desk

Advise your IRT case manager who the desk officer dealing with the request is.

Optional Text Comments

Relevant Search

If request is for information over 4 years old, ensure a copy of the request is sent to Retrievals in Hanslope Park with as much additional advice as possible to assist in the search

Make sure the lead Desk Officer has searched I-records

- Make sure the lead Desk Officer has searched Paper files
- Make sure all relevant officers check their personal area
- Make sure the lead Desk Officer has asked any other FCO departments and overseas posts that may also hold relevant information to carry out a search
- If the search for information looks likely to exceed £600 limit contact IRT for advice

Assessing information

- Discount any information not relevant to the request
- Decide if any of the information can be released
- If you plan to withhold some or all of the information, decide which exemption(s) applies and make a note of how and why you reached these decisions
- If withholding information, consider whether this will be in the form of a digest or original document with redactions
- When using qualified exemptions, assess the public interest **for and against** disclosure for each exemption and make sure you are able to explain how you have reached your Decision
- If it is necessary to consult OGDs (e.g. MOJ/Cabinet Office - contact your IRT Case Manager)
- If necessary, inform third parties
- If necessary, consult specialists such as your Legal Adviser, Research Analysts or Historians.
- [Redacted under section 36]
- [Redacted under section 23]
- If using section 36, make sure a ministerial submission is drafted and cleared through IRT.
- A Minister **must** approve the use of section 36.
- Decide whether case is high profile enough to warrant a submission anyway. If it is, make sure you clear your submission through IRT
- If it is likely that you are not going to meet the 15 working day deadline contact IRT **asap**

Clearance

Ensure draft reply includes:

- * *the IRT case reference number*
- * *confirmation of whether or not we hold the information*

- * *list and explanation of all exemptions being used*
 - * *public interest arguments for and against for all qualified exemptions*
 - * *standard copyright paragraph if releasing actual documents (rather than digests)*
 - * *standard right to appeal/complaints paragraphs*
- If relevant, also clear your draft with other interested FCO departments:
- Consult with Press Office if request has a corporate element
e.g. Estates, Ministerial, Expenses etc.
- Clear your draft through your OGLO
- Clear your draft through your Deputy Head of Dept (or D band equivalent)
- Pass your draft to IRT by 15 working days for their internal clearance through MOJ etc.
- Issue the reply once clearance it is received and send a copy to your Case Manager.

Afterwards - Complete the audit trail

- Update departmental spreadsheet
- Make sure a copy of the request and a complete audit trail is retained in Dept (ensure all correspondence relating to the request is stored in the case file).
- Make sure **all** the information considered for the request is stored in the file clearly marking out the information released and the information withheld.
- The requester has the right to request an internal review. If that happens, inform IRT immediately.

All FOI request case files should be retained in the Dept for 2 years after the last action.

Internal Reviews

- If you receive an Internal Review request from anywhere other than IRT, you must inform IRT as soon as possible
- For an internal review, a different officer needs to repeat the process and decide whether the request was correctly handled
- An internal review form needs to be completed and returned to IRT with the agreed departmental response. Given the escalated nature of Internal Reviews, the reply should issue under cover of the Head of Information Rights Team

Information Commissioner's Complaints

If an applicant is dissatisfied with the outcome of their request, he/she may submit a complaint to the Information Commissioner's Office. IRT will be notified of the complaint and will contact you and the lead desk officer as a priority.

The department should collate the withheld information ready to submit to the ICO for consideration

The department should consider if there is any information which should not be released to the ICO

The department should consider if any of the information can now be released to the applicant and should consult necessary parties.

Decide if any of the information can be released.

If you plan to withhold some or all of the information, decide which exemption(s) applies and make a note of how and why you reached these decisions

If withholding information, consider whether this will be in the form of a digest or original document with redactions.

Redactions and Digests

If no information contained within a document is exempt, then a copy of the document can be made and released in its entirety. However, if you have applied an exemption to any information within a document or parts of it are irrelevant to the request, you will need to remove these parts by redacting or digesting them.

Redaction

Redaction means that you remove the exempt parts of a document by photocopying the original and cutting out the exempt parts (using a scalpel on copies of paper documents or deleting from copies of electronic documents). However, if you are making redactions from electronic documents, please be aware that technological advances allow redactions to be reversed. Please see the updated [guidance on how to make redactions safely](#) which was issued on 23 March 2011.

Digests

Please remember that FOI applies to **information** and **not documents**. Whilst the information requested is often likely to be contained in a document, this does not mean that the document has to be released with exempt material redacted from it. Rather, it may be more appropriate to release solely the information that can be released by creating a new document with only that information contained in it. This new document is called a **digest**. This can be done by retyping information from a

paper document into a new Word document or cutting and pasting from an electronic document into a new Word document.

The Information Rights Team consider releasing information in digest format to be the best practical solution.

For further advice about redacting or digesting, please contact IRT.

When using qualified exemptions assess the public interest **for and against** disclosure for each exemption and make sure you are able to explain how you have reached your decision

If you feel that Other Government Departments (OGDs) should be involved, contact your IMD case manager, who will determine what central co-ordination may be required.

If necessary, inform or consult third parties.

Third Party Consultation

It is important to consider the following when consulting with third parties when dealing with an FOI request:

- A third party can be another government department, another public authority, a former minister or administration, a private company or any individual to which the information refers. This list is not meant to be exhaustive.
- Where a request relates to correspondence with an MP, the MP concerned should be consulted in all cases.
- Third parties should generally be informed immediately on receipt of the request, although without calling for any response at this stage. The purpose of this step is to notify the third party that the request has been received.
- On completion of the public authority's initial assessment, the third party should be consulted so that his or her knowledge of the issue can inform the public authority's conclusions.
- Consultation with third parties should be conducted as soon as possible, with clear deadline set so that the 20 day time limit can be met. Where a qualified exemption is engaged, the 20 day time limit may be extended to allow for consideration of the balance of the public interest. Extensions should generally avoid exceeding 20 working days, and you are expected to comply with your estimated time for response unless there are good reasons not to do so.
- When consulting with third parties you should not reveal the name of the requester
- It should be made clear to third parties that, if they wish to oppose disclosure, they must provide reasoned arguments to the public authority holding the information.

- Due weight must be given to any reasonable views expressed by those consulted. Views expressed by Departments and public authorities, in particular, should be informed by their own understanding of their FOI obligations. However, the ultimate decision on disclosure rests with the public authority that holds the information and has the legal responsibility for the decision.
- The public authority should inform the third party of its decision before it notifies the requester and where it has taken a different course of action from that preferred by the third party, explain its reasoning.
- It is important when proposing to withhold information under Section 36 that the 'Qualified person' is informed of who has been consulted and the substance of their opinion.
- Whitehall departments should refer any disputes over the release of information to the Clearing House.
- Third parties should be kept informed of relevant decisions taken and directions made during subsequent appeals

Below are various letter templates that can be used when consulting/informing a 3rd party:

Possible Consultation

I am writing to you in connection with a request for information received by the [Department /Agency] under the above legislation. Part of the information requested [was supplied by/relates to] you and a [copy of this/description of the information] is enclosed.

The Department will disclose information unless the information is exempt from disclosure, and it may be exempt where the public interest is better served by withholding the information.

If you consider that the information supplied by you should not be disclosed, please let me have written details of how, in your view, disclosure of the information would be harmful. The final decision on whether the information should be withheld rests with [department] . However, we will take into account your views when making this decision. We will write to you letting you know if the information will be released.

Your response must reach me by [date] to enable the [Department/Agency] to take your views into account in deciding whether to disclose the information. If you do not make any representation by that date, the [Department/Agency] will assume you have no objections to the information being disclosed.

If you have any queries about this letter, please contact me. Please remember to quote the reference number above in any future communications.

Yours etc

[Name, address, email address and telephone number of issuing officer]

Letter to third parties – are/are not disclosing information

I refer to my letter of [date] [and your response on (date)]. I am writing to advise you that, having taken your comments into full consideration, the Department has decided [to /not to] disclose the information concerned.

[(REMOVE THIS LINE IF DISCLOSING). After consulting you as to your views on the harm that would be caused by releasing the information, the [department] made an assessment of the public interest in whether the information could be withheld. In making the assessment of the public interest the [department] took the following factors into account:

Brief list of factors taken into account

You should note that the applicant has the right to seek a review of this decision. I will advise you if the applicant requests such a review.]

If you have any queries about this letter, please contact me. Please remember to quote the reference number above in any future communications.

Yours sincerely

Yours etc

[Name, address, email address and telephone number of issuing officer]

Informs 3rd party of appeal to ICO re withheld 3rd party information

In my letter of [date] I advised you that in relation to a request for information [relating to you / supplied by you] the [Department/Agency] had decided not to disclose the information. The applicant subsequently appealed this decision and following an internal review the original decision not to disclose the information concerned was upheld.

The applicant has now referred the matter to the Information Commissioner who will undertake an independent review. The Information Commissioner has the right to inspect the information you provided to [department] and make a decision as to whether the exemption(s) was/were correctly applied (which includes making an independent assessment of the public interest test).

If the Information Commissioner comes to the conclusion that the information should be released, he may issue an notice which will set out the steps which [department] must take, and the date by which they must be taken. This may lead to the disclosure of the information which was previously withheld, including the information you supplied to [department]. If we consider that the information should continue to be withheld, we will be able to appeal to the Information Tribunal against the notice issued by the Information Commissioner.

It is possible that the Information Commissioner will contact you in the course of this review.

[department] will of course keep you informed at all stages of the appeal process.

Yours etc

[Name, address, email address and telephone number of issuing officer]

If necessary, consult specialists such as your Legal Adviser, Press and Digital Department, Research Analysts, Finance Directorate or the Historians.

[Redact under section 36]

[Redact under section 23]

If using section 36, make sure a ministerial submission is drafted and cleared through IMD. A minister **must** approve the use of section 36.

Submissions to FCO Ministers: section 36 authority

When submitting to Ministers seeking authority to withhold under section 36, originators **must** ensure that the Minister has the opportunity to make his own assessment of the information that is to be **exempted**, along with that which it is proposed to **release**. It is not enough simply to include a reference to the type of information in the body of the submission, such as "exchanges between officials and advice to Ministers".

That means that, where the volume of information is very small, copies of the exempted documents themselves should be attached; where it is large, or voluminous you must liaise with Private Offices to agree on how best to provide the Minister with the material to be withheld.

This needs to be done because we are asking the Minister to confirm that, in his reasonable opinion, as a qualified person under the Act, specific information is exempt under s36, and he cannot properly do that without having the opportunity to form his own view of what that information consists of. If there is nothing accompanying the submission to enable him to do that, and the case subsequently goes to the Information Commissioner, it could reasonably be argued that the Minister's decision was based on an incomplete assessment of the information and that he could not, therefore, have reached the reasonable conclusion that the exemption was engaged.

Decide whether case is high profile enough to warrant a submission anyway. If it is, make sure you clear your submission through IMD

Public Interest Test Letter

If you need to extend the deadline to apply the Public Interest Test, you will need to send a letter. Note: Extending the deadline is a last resort and can affect any appeal that goes to the ICO.

If it is likely that you are not going to meet the reply deadline contact your Case Manager IMD as soon as possible.

Public Interest Test Letter Template

Name

Address

Address

Address

Postcode

Date

Dear **xxxx**

Freedom Of Information Request: **xxxx-11**

Thank you for your request for information which we received on **xx xx 2011**. In your request you asked for;

[Paste full request here]

I can confirm that the Foreign and Commonwealth Office does hold information falling within the terms of your request.

The FOI Act obliges us to respond to requests promptly, and in any case no later than 20 working days after receiving your request. However, when a qualified exemption applies to the information and the public interest test is engaged, the Act allows the time for response to be longer than 20 working days, and a full response must be provided within such time as is reasonable in all circumstances of the case. We do, of course, aim to make all decisions within 20 working days, including in cases where we need to consider where the public interest lies in respect of a request for exempt information. In this case, however, we have not yet reached a decision on where the balance of the public interest lies.

In your case we estimate that it will take an additional 20 days to take a decision on where the balance of the public interest lies. Therefore, we plan to let you have a response by **xx xxxxx 2011**. If it appears that it will take longer than this to reach a conclusion, we will keep you informed.

The specific exemption which applies in relation to your request is: **Section 27 International Relations and Section xxx**

If you are unhappy with the service you are receiving and wish to make a complaint, please write to the Information Rights Team at The Old Admiralty Building, Room SG 120, London, SW1A 2PA. E-mail: dp-foi.img@fco.gov.uk.

If you are not content with the outcome of your complaint, you may then apply directly to the Information Commissioner for a decision. Generally, the Information Commissioner cannot make a decision unless you have exhausted the complaints procedure provided by the FCO. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF.

Please contact me if you have any queries about this letter.

Yours sincerely,

[Name]

[Role [Desk Officer etc]]

[Department]

Clearance

Draft a reply using one of the letter templates. You should ensure that your draft reply is then:

- Cleared through your OGLO
- Cleared through your Head of Department
- Pass your draft to IMD for clearance through IMD, Cabinet Office etc.
- When you have received clearance issue the final reply in PDF format and send a copy to your Case Manager in IMD.

Afterwards

Complete the audit trail

Audit Trail

You must keep a comprehensive audit trail for the request as you will deal with it. This should be kept as a case file, either in paper format or in your department S: drive (or similar shared area).

The audit trail should include:

- A copy of the request (with any subsequent changes recorded)
- Any correspondence you have had with the enquirer
- A note of where you searched for the information (electronically and paper)
- Any other departments or posts you may have contacted (including nil returns)

The information you found for the request
An estimate of the time taken for the request
Any fees notices
Copies of any information you considered but did not disclose
Copies of the information you did disclose
Copies of advice you received from IMG (including IMG's Legal Adviser), MoJ and OGDs or other third parties consulted.
Full justifications for your use of exemptions
Full record of your application of the public interest test
Your reply to the enquirer.

You may also find it useful to attach an inside file sheet to your case file. Case files should be kept for two years in your section.

It is **vital** to keep a fully comprehensive audit trail. It is not only good practice to keep this, but it will be needed if any other officer takes over the case. Furthermore, if the enquirer complains about the handling of their request to the Information Commissioner's Office your case-handling papers will be critical in answering those complaints.

Update departmental spreadsheet

Make sure a copy of the request and a complete audit trail is retained in Dept (ensure all correspondence relating to the request is stored in the case file).

Make sure **all** the information considered for the request is stored in the file clearly marking out the information released and the information withheld.

The requester has the right to request an internal review. If that happens, inform IMD immediately.

All FOI request case files should be retained in the Dept for 2 years after the last action.

Internal Review

The purpose of having an internal review is to re-consider the initial handling of a FOI request by:

- Reviewing the initial assessment, use of exemptions and the decision made in response to an FOI request
- Reviewing the procedures followed during the handling of the request

An officer of a higher grade than the officer who answered the original request should conduct the internal review. Internal reviews must be answered within 20 working days from the date the request for an internal review was received.

To complete an internal review, you need to produce two documents. These are:

- Internal Review Summary – This is for internal use only and serves as an audit record that reflects we have thoroughly undertaken an Internal Review. It also summarises the evidence in the case file for the initial request so that it can be used at a later date if needed. You can find guidance on what to include in your Summary at Annex A.
- A draft reply to the requester – This is to inform the requester of the outcome of the internal review and should explain in detail how you have reached your conclusion. You can use our reply template at Annex B to help formulate your reply.

You will need to send the Internal Review Summary and your draft reply to your IMD Case Manager once it has been cleared by your OGLO and Head of Department. Please keep your IMD Case Manager up to date with progress while carrying out the Internal Review. Your Case Manager will also be able to answer any questions you may have.

ICO Complaints

The Information Commissioner's Office is an independent public body set up to promote access to official information and protect personal information by promoting good practice, ruling on eligible complaints, providing information to individuals and organisations, and taking appropriate action when the law is broken.

The Information Commissioner enforces and oversees the Data Protection Act, the Freedom of Information Act, the Environmental Information Regulations, and the Privacy and Electronic Communications Regulations.

The Information Commissioner may either affirm a public authority's decision on access to information under the Freedom of Information Act or require further action to be taken to comply with the Act. Any such requirement will be set out in a Decision Notice or an Enforcement Notice. If a public authority fails to comply with a Notice, the Commissioner may certify failure to the High Court (or the Court of Session in Scotland) and the court will deal with the authority as if it had committed a contempt of court.

When the Information Commissioner contacts the FCO he will normally ask to see all the information that has been withheld. It is therefore important that desk officers keep a copy of the information that they have assessed for the request. The information that has been released should be clearly separated from the information that has been withheld. The withheld information should be flagged up with the relevant exemptions and the reasons why the exemptions are engaged.

Contact with the Information Commissioner is usually done through the Information Rights Team.

Both the complainant and the public authority also have a right to appeal against the Commissioner's decisions. The appeal is to the First Tier Tribunal and thereafter, on a point of law only, to the courts.

Freedom of Information: Frequently Asked Questions homepage

Q1. What is a valid FOI request?

A request is only a valid request for the purposes of FOI if it is in writing, states the applicant's name and an address for correspondence and describes the information requested. If a request is too imprecise to describe the information requested it is not a valid request. The assumption is that a request will be in English – but if a post receives a request in the host country language that it normally conducts business in – we would consider that a valid request. Please contact IRT if you receive a FOI request in Welsh, or a request for the information to be provided in Welsh.

Q2. Who acknowledges the request when it's received?

If the request is received directly by the Information Rights Team in IMD, then we will acknowledge receipt of it with the enquirer before we forward it to the appropriate department to handle. IRT directly receive the majority of requests submitted to the FCO as our contact details are advertised on the FCO website. However, if you receive a request directly into your department, you should forward it to IRT so we can acknowledge, log, provide a reference number and allocate it to the appropriate department.

Q3. How do I recognise an invalid broad request?

A There are no hard and fast rules; judgement needs to be exercised in each case. If you are unsure where to start your search / where your search will finish, it is likely that the request is too broad. Examples of requests that are too imprecise or broad include:

- 'what is the UK's position in the UN'
- 'may I have all the information about UK – Ukraine relations'
- 'any briefing notes prepared for the Foreign Secretary or his deputies relating to Canada since January 2004'
- See Q4 for how to respond to the applicant

Q4. What to do with a request that is specific but so voluminous that the cost of identifying and locating the information and assembling it for disclosure would exceed the cost threshold of £600 (3 ½ days work)?

Explain to the applicant that locating the information would exceed the upper cost limit and encourage the applicant to reduce the scope of the request to bring it under the limit. This should be phrased along the lines of the following:

“Section 12 of the Freedom of Information Act makes provision for public authorities to refuse requests for information where the cost of dealing with them would exceed the appropriate limit. The appropriate limit has been specified in regulations and for central Government, it is set at £600. This represents the estimated cost of one person spending 3 ½ working days in determining whether the Department holds the information, and locating, retrieving and extracting the information.

You have requested ****. This is a very widely-framed request for information and we estimate that it will take us more than 3 ½ days to locate, retrieve and extract this. We are, therefore, not obliged under the Act to comply with this request. You may therefore wish to refine your request to take it below the limit.”

You may also wish to do this by speaking to the applicant, but remember to always confirm a telephone conversation with an applicant in writing afterwards.

Q5. How is the cost limit calculated?

A The upper cost limit for answering an FOI request is £600 (3 ½ days). This is the hours involved in dealing with the request by one or multiple individuals.

What can be counted?

- Determining whether you hold the information requested;
- Locating the information or documents containing the information;
- Retrieving such information or documents, and
- Extracting the information from the document containing it (including editing or redacting information). This can include the first time an individual working in the authority reads information to establish what is contained within a file or document, although any subsequent readings (e.g. to consider exemptions), or if the information is passed to others to read, should not be included.
- “Disbursement” costs – photocopying, postage, digesting – transferral to CD. translation services.

What cannot be counted?

- The time taken to check that a request for information meets the requirements of the FOI Act

- Considering whether the information requested should be withheld in reliance on an **exemption** under the FOI Act. This includes any costs incurred through seeking legal advice about whether exemptions apply
- Considering whether a request is **vexatious** or a **repeated request**
- Obtaining **authorisation** to send out the information
- The time taken to calculate any **fee** to be charged; or
- Advice and assistance provided under section 16 of the FOI Act

Q6. Who decides whether a request is too broad and/or is likely to exceed the £600 limit?

IRT will make an initial assessment, often consulting the lead department. However, the lead department can subsequently decide, after a physical review of the information held, whether the £600 limit is likely to be exceeded. Such decisions will need to be supported by evidence (for our own files only) that a likely cost calculation has been made. Such evidence may be called for by the ICO if the requester subsequently challenges our decision.

Q7. What happens to the deadline if the request is too broad or voluminous?

If you receive a request and estimate that the cost of responding to it would exceed the £600 limit, you are not obliged to comply with the request. You should according to MoJ guidance consider whether it would be appropriate to discuss with the requester whether the requester wishes to reformulate the question to bring it under the appropriate limit. If so, then the clock starts ticking from the receipt of the reformulated request. Not before.

Equally, if you receive a request and require further information from the applicant in order to identify and locate the information requested, and you inform the requester accordingly, then you are not obliged to comply with the request unless supplied with that further information. The clock starts ticking from the receipt of the further information and not before. Unless the terms of the request are clarified on day one of receipt - this revised request is a new request and should be given a new reference number.

Q8. I cannot answer the request within 20 working days. Can I get an extension?

Every effort should be made to respond promptly and within the 20 working day limit set by the FOI Act. However, in some cases this may not be possible. The Act permits extensions when more time is needed to decide the public interest test; when information is held overseas or when consultation with other governments is needed. The conditions and procedures for obtaining a Public Interest Test

extension (under s.10(3)) or extension under Section 10(4) are set out below. If you are not going to meet a deadline **do not seek to extend the deadline informally, since any informally agreed extension with the applicant does not count as a permitted extension, but will count for monitoring purposes as a missed deadline.**

If you are not going to meet the 20-day deadline, and neither the Public Interest Test (S.10(3)) nor Section 10(4) are applicable, you should always consult IRT for advice on how to proceed

Public Interest Test Extension

Departments may extend the 20-day period when more time is needed to decide the balance of the public interest. This only applies when a qualified exemption has been identified as applying to the information requested. The qualified exemptions include s.27 International Relations, s.35 Formulation of Government Policy and s.36 Prejudice to the effective conduct of public affairs. The Act then allows departments to extend the 20-day period 'until such time as is reasonable in the circumstances' (section 17 of FOIA). There is no set period for this extension time. It will vary according to the case. MoJ recommend between 5-10 working days, but there may be cases where longer is needed.

In practice it is often better to send an extension of 10 or 20 working days rather than a series of small extensions.

Departments should write to the applicant before the expiry of the 20 day period and specify the exemption in question, say why it applies and give an estimate of the date by which a decision will be made in relation to the public interest.

Sample wording for this is as follows:

The FOI Act obliges us to respond to requests promptly, and in any case no later than 20 working days after receiving your request. However, when a qualified exemption applies to the information and the public interest test is engaged, we are able to extend the time for response by a reasonable period. We do, of course, aim to make all decisions within 20 working days, including in cases where we need to consider where the public interest lies in respect of a request for exempt information. Your request, however, continues to raise complex public interest considerations which must be analysed before we can come to a decision on releasing the information.

The exemption/s we are currently considering in relation to your request is/are ** insert the relevant Public Interest exemption/s here and name them – e.g. 27 – International Relations)

We estimate that it will take an additional 20 working days to take a decision on where the balance of the public interest lies.

Therefore, we plan to let you have a response by *** . If it appears that it will take longer than this to reach a conclusion, we will keep you informed.

If you are unhappy with the service you have received in relation to your request and wish to make a complaint, or request an Internal Review, you should write to me.

If you are not content with the outcome of your complaint, or Internal Review, you may apply directly to the Information Commissioner for a decision. Generally, the ICO cannot make a decision unless you have exhausted the complaints procedure provided by the FCO. The Information Commissioner can be contacted at: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF.

Please contact me if you have any queries about this e-mail.

Yours sincerely,

Information held overseas or consultation with another government is required (Section 10)

Under s.10(4) of the Act, the FCO can extend the 20 working day deadline upwards to 60 working days if it is necessary to obtain information from overseas or consult with other governments. However this requires a formal application to the Information Commissioner's Office. If you require such an extension, IMG will advise you on this. However, in practice a consultation with foreign government/s you believe may take months - is more likely to be covered by a series of standard Public Interest Test extensions quoting section 27.

Q9. How far must I search for information to answer the request?

Unlike Subject Access Requests made under the Data Protection Act, you are not necessarily required to search all records every time. What you must do is carry out a **reasonable search** to find the information required in order to answer the request fully. Bear in mind that the FoI is about information, not documents. A lot will depend on how the question is phrased, but you may often be able to provide extracts from only a handful of documents that fully answers the enquirer's question. If an enquirer asks for "all documents relating to..." you should look carefully at whether the request is too broad and / or can be answered within the £600 limit.

Q10. Who answers requests for information over 4 years old?

From 1 January 2007 any FOI request relating to material held in the Hanslope Park archive (i.e. between 3 and 30 years old), will be dealt with by the lead policy team or department, NOT the Information Rights Team in IMD.

Q11. When should I involve the Information Rights Team in a case?

You should always contact IRT as soon as an FOI request is received, so that the request may be recorded and allocated an IRT reference number for statistical and tracking purposes. Thereafter, you should contact IRT if you have any queries on the handling of an FOI request, and also ensure that all replies and documents you are planning to release or withhold are cleared through IRT. [Redacted under section 36]

Q12. When should I involve Legal Advisers?

Legal Advisers need not be routinely informed of all FOI requests that their departments receive. Departments should look in the first instance to IRT for support and advice: IRT has its own Legal Adviser who sees all Freedom of Information Act requests. IRT's Legal Adviser will liaise with the departmental Legal Adviser as necessary.

Q13. Is a request for a file list a valid FOI request?

Yes, there is no presumption against disclosure of file lists themselves. Exemptions can, however, apply to the information in the file title in the same way as they can apply to any other form of information. So, file lists are not exempt but some of the file titles might be.

Q14. How and when do we forward requests to the right government department?

The FCO can only transfer a request to another Government Department (e.g. the lead policy Government Department) if the FCO holds **no** information that is relevant to the question asked. The situation can arise where the same request has been made of several Departments and we all hold information (including copies of the same information). In those circumstances all Departments with relevant information must answer the same question, often based on virtually the same information.

If you have **none** of the information requested and know that an OGD has the lead, please ask the applicant to forward the request to the appropriate government department. IRT can give you contact details if required.

Q15. What if the FCO disagrees with MoJ Clearing House advice?

[Redacted under section 35]

Q16. What about requests for whole files?

You should refer any requests for the contents of whole files to IRT.

Q17. How should I apply the s.27 international relations and s.35 & s.36 policy exemptions?

These exemptions are **broad** and government policy is to defend them **robustly**, especially for all material less than 10 years old. **But these are not blanket exemptions**. All three (27, 35 and 36) are qualified exemptions and are subject to public interest test and we must apply them on a case by case basis. FCO Working Assumptions to help you form judgements on the releaseability of information. Guidance on diplomatic reporting is also available on FCONet.

Q18. When should we consult foreign governments on the release of information/documents?

The policy agreed by Ministers is to consult except where we can form a reasonable judgement of the likely views of the government concerned without doing so. Where we do feel the need to consult, then we can get an extension of up to 60 working days to do so. However this requires formal application to the Information Commissioner and will be done by IRT.

Q19. If a foreign government objects to the release of information are we bound to accept their view?

No, the final decision is ours to make. But the fact that they have said that they do not want information released would then be a good indication that s.27 is engaged and a strong factor to take into account in assessing the balance of the public interest.

Q20. [redacted under section 36]

[redacted under section 36]

Q21. When do I have to submit to ministers?

There is no hard and fast rule; it must be a matter of judgement. The degree of sensitivity of the subject matter or the precedent-raising nature of the case will be among the factors to take into account. You do not need to submit every time an exemption is used, except when using Section 36 (prejudice to effective conduct of public affairs – under the Act a minister must decide whether this exemption can be applied in any particular case).

Q22. What's the interaction between FOI and PQs?

PQs are not FOI requests. Normal procedures apply for PQs and you should follow the new PQ Guidance when drafting PQ answers. This Guidance helpfully explains the interaction between FOI and PQs. Main points are:

FOI exemptions should not be cited when refusing information in answer to a PQ. However reasons for refusal should be given in terms similar to the FOI Act e.g. 'The release of this information would prejudice commercial interests'

IRT can advise on which FOI exemptions might apply to the information being considered when answering an PQ. However, IRT does not provide the actual wording for the reply to a PQ.

PQs should be answered within normal PQ deadlines not the FOI 20 working day period.

Consideration of a parallel FOI request cannot be used as a reason to delay an answer to a PQ

However where an MP/Peer tables a question and has also submitted a separate FOI request asking the same question, it is reasonable to reply that the issue is currently under consideration.

Where a decision on an FOI case results in a change of policy and information previously withheld is released, consideration should be given to informing both Houses e.g. through a written ministerial statement.

Q23. Who should conduct an internal review and what does it entail?

The internal review is a second examination of the issue. It is good practice to put a fresh eye on the case and have it conducted by someone other than the original case handler. There is a template available on FCONet which will guide you through the general procedure.

Any department receiving a request for internal review should seek advice from IRT, who will refer the case to the MoJ Clearing House. Aspects to be considered in any review include the following:

was there a reasonable search of all relevant files?

were appropriate third parties (other departments/posts outside bodies/individuals) consulted appropriately?

were exemptions correctly cited and their use explained to the enquirer?

were the factors considered during the application of the public interest test properly recorded and explained?

was proper legal advice obtained (both FCO and MoJ if appropriate)?

was the initial substantive reply cleared at an appropriate level?

MoJ guidance states that an internal review must be completed within a “reasonable timescale”. **IRT advise that you should aim to reply to a request for an internal review within 20 working days.** You can extend this deadline if you require further time.

Q24. What information do I need to consider when replying to an FOI request?

When replying to an FOI request, you need to consider all the information that the FCO holds relevant to the request. If the FCO holds information that has originated from another source e.g. another Whitehall Department, former Ambassador, former

Minister etc., you will generally need to contact the originator, as a courtesy, to find out if they are content for the information to be disclosed. If you are unsure as to whether or not you should contact the originator of the information, then discuss with your Case Manager in IRT.

Q25. Who leads, if more than one department holds information relevant to a request?

If it is not obvious from the request which department should lead and no-one is willing to volunteer, then IRT will be the arbiter and decide which department should lead. Please note that the IRT does not take the lead on any FOI requests.