



MOD FOI/EIR Compliance Notes

Other FOI Issues and Considerations

CN12: Requests with Wider Implications

(Ministers, Press Office, MOJ, Cabinet Office, Attorney General, and [REDACTED])

Document history

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What this is about:

This note provides an overview of how to respond to requests with wider implications. For instance requests which cover cross-Whitehall issues, requests relating to security matters, and suspected round robin requests may all require oversight from Ministers, the Press Office, Ministry of Justice and the [REDACTED]

Detail:

It is very important to consider the possibility that releasing information in response to a request could have Whitehall-wide implications, or that the release, or withholding, of certain information is likely to generate wider public or press interest.

Ministers

- The **normal procedures for informing Ministers and Senior Officials should be followed when appropriate**. This will be especially important if there is a prospect that the disclosure or withholding of information may draw criticism or cause embarrassment to MOD. There is a convention that ministerial papers concerning advice to an administration should not be available to a later one.

Press Office

- If there could possibly be any media interest in the information to be disclosed, or withheld, you should contact the relevant press office **several days before** the information is released if possible.
- The press officers will advise whether they need additional briefing material to answer potential media enquiries on the issue. If there is likely to be media interest in the information to be disclosed, you should also arrange for it to be published on the MOD website.
- To determine whether the information in question is likely to have interest to the media, consider:
 - Is the request being made by a journalist or media outlet?
 - Is the request being made by a politician, a lobby or interest group?

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- Is the information likely to be embarrassing to the Armed Forces, individual Service personnel, the MOD, individual MOD employees, Ministers?
- Does the information relate to live issues, or is it only of historic interest?
- Is this the first time the information has been in the public domain? It is best to err on the side of caution, and if you are not certain ask the advice of relevant press officers.

[REDACTED]

[REDACTED]

Ministry of Justice – Round Robin Lists

- It is important that FOI practitioners across Government are aware of which cases have a wider interest and are able to receive expert advice on those which may raise sensitive issues or which would benefit from a consistent line being taken.
- MoJ's FOI Policy team will therefore maintain and circulate a round robin list. The list will be circulated at least three times a week. The referral email address for round is: roundrobins@justice.gov.uk.
- The MOJ FOI Policy team will not be responsible for drafting round robin guidance for any round robin requests. The relevant department with lead responsibility for the subject of the request will provide advice to the other departments in receipt. For example, the Cabinet Office will draft round robin guidance for those requests which affect Ministers, whilst the relevant department will draft guidance for those round robins which raise national security issues, involving the [REDACTED] as necessary.
- The MOJ FOI Policy team will circulate the guidance on behalf of the issuing department via the round robin list. If your business area is leading on a request which has been issued central guidance this will be forwarded to you by CIO-SPP-IR Ops1
- FOI focal points must inform CIO-SPP-IR Ops1 as soon as possible if they believe they have received a round robin request
 - Telephone: Military: MB [REDACTED]
 - Civilian: [REDACTED] or [REDACTED]
 - e-mail: Internal: CIO-SPP-IR Ops1
- CIO-SPP-IR staff will also monitor the Access to Information Toolkit (AIT) for potential round robin cases and advise the focal point leading on the request whether central guidance is to be issued or if Departments are to deal direct with each other on how to proceed.

Cabinet Office - Ministerial issues / Propriety and Ethics, Communications with the Royal Household and Honours

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- Requests which relate to communications with the Royal household and the conferring of Honours, should be highlighted and referred to CIO-SPP-IR Ops1 who is responsible for sending these requests to the Cabinet office for clearance: foiteam@cabinet-office.x.gsi.gov.uk .
- Any requests which relate to propriety issues relating to Ministers and Special Advisers should be highlighted and referred to CIO-SPP-IR Ops1 who is responsible for sending these requests to the Cabinet office for clearance: proprietyðicsteam@cabinet-office.x.gsi.gov.uk

Attorney General – Papers of a Previous Administration (PPA)

- The key criterion on whether submissions relating to Papers of a Previous Administration (PPA) should be referred to the AG is not just if they relate to a policy formulation (section 35) or would be likely to prejudice the effective conduct of public affairs (section 36) but, more specifically, does the information reveal a former minister's views (as opposed to an officials' views on a policy issue or any other matter).
- Focal Points should refer submissions relating to PPA which contains information which represent the views of a minister of the previous administration to CIO-CI-Access who, if necessary, will forward to the Attorney General directly at: foi@attorneygeneral.gsi.gov.uk.
- References to PPA which are factual and which consist of information already in the public domain do not need to be referred to the AG.
- You should familiarise yourself with the relevant section of the MOJ's PPA guidance before sending your submission. There is no need to clear the draft submission with MOJ prior to sending it to the Attorney General's office.

FOI from a Parliamentarian: The MC FOI

- If a communication is received from a Parliamentarian (MP, Peer, MEP, Member of a Devolved Legislature or from their staff) which includes a request for recorded information, then this needs to be treated differently from the process set out in Ministerial Correspondence guidelines.
- It should be treated as a request for information (RFI) under the FOIA and recorded on the AIT. However, unlike replies to other FOI requests, the response must be sent from a Minister, hence requiring a Ministerial Submission from the SME/FP. This type of request is called an 'MC FOI'.
- **When the request is allocated, CIO-CI-Access will inform the SME or FP that RFI has come from a Parliamentarian;** it must therefore be treated as an 'MC FOI'; and the following summary of points should be sent in parallel:

A response to an MC FOI (RFI from a Parliamentarian) must:

1. Comply with the Freedom of Information (FOI) Act 2000 – full response sent within timeframe, use of exemptions, compliance of release, public interest tests and refusal under cost constraints.

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2. **Be supported by a Ministerial Submission with a draft reply attached** for the relevant Minister to respond. **The response must not be sent by the SME or FP.**
3. Be split into two separate ministerial draft replies if the request contains both a request for recorded information **and** seeks views and opinions on any matter (for example seeks clarification of policy or explanation of actions taken by the Department). In the second instance, a Minister may wish to include recorded information to strengthen an argument, but this should not be treated as a response under the Act.
4. Contain the standard FOI appeals paragraphs at the end of the FOI element of the response – explaining the complaints procedure and giving the option for informal resolution and/or internal review.
5. Contain a sentence informing the Parliamentarian that a request under the Act can be made by any individual, and in this case we are treating the request as being made by the Parliamentarian – this is if a Parliamentarian has sent an RFI on behalf of a constituent.
6. Be submitted to the Minister's office in time for a response to be sent within 20 working days, as the Act requires. The Department has, however, undertaken to answer all correspondence within 15 working days and Lead Branches should aim for this timescale to be met whenever possible.
7. Be sent to the Minister's office with a note clearly seeking clarification from the Minister's office of when the response was sent, so it can be closed on the AIT system by the SME/FP.
8. Follow the general 'good practice' rules that govern the handling of Ministerial Correspondence.

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