



## MOD FOI/EIR Compliance Notes

### Initial Handling of Requests for Information

#### CN3: Identifying a Valid Request for Information

##### *Document history*

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##### *What this is about:*

This note provides an overview on how to identify a valid request for information. It summarises the difference between Business as Usual (BAU), Environmental Information Regulations (EIR) and FOI requests.

##### *Detail:*

Any request for information has the potential to be considered as a request under the FOI Act but some types of information will more legitimately be handled under other information access regimes or, where all the information held can be provided, under normal business procedures (see below).

Requests for information **do not** have to mention the FOI Act or direct their request to a designated member of staff, but to be a legitimate request they must:

- be in writing (letter/fax/email);
- provide the requesters' name and return address;
- describe the information requested with sufficient clarity to enable the MOD to identify whether information is held.

If you receive an FOI request over the phone please provide the requester with the CIO-SPP Information Rights Team's contact details and the MOD's FOI webpage:

CIO-SPP-Information Rights  
1st floor, Zone N  
Main Building  
Whitehall  
London, SW1A 2HB  
United Kingdom

<http://www.mod.uk/DefenceInternet/FreedomOfInformation/>

EIR Requests made over the telephone are legitimate requests and do not legally need to be confirmed in writing. Although lack of written confirmation does not exempt the Department from complying, to avoid any misunderstanding it is good practice to encourage the requester to make a written request.

#### **What other kinds of access regimes should I consider?**

When considering a request we must decide which information access regime (or regimes) applies. In addition to the FOI Act, the Data Protection Act (DPA) 1998 and/or the Environmental Information Regulations (EIR) 2004 might apply. Information on the rules and procedures for request for information which fall under each of these regimes can be found in the relevant procedural guidance. However, in brief:

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- [The DPA](#) gives individuals the right to their own personal information.
- [The EIRs](#) give individuals the right to information relating to the environment.

### When should I handle a request as a normal business request?

You may decide that the most appropriate way to handle a request would be to handle it as a normal customer enquiry under business as usual procedures (in which case you should inform the requester that this is the procedure that will be followed) i.e. if a member of the public asks for recruitment or publicity materials: if the request is seeking an explanation of MOD policy (rather than recorded information), or the request is from a normal business contact. The FOI Act should apply if you:

- cannot provide the requested information straight away; or
- the requester makes clear they expect a response under the Act. Where requesters submit their request through the "[What do they Know](#)" website, where requests are allocated to a focal point as an FOI request by CIO or where the request specifically refers to FOI, a formal FOI response should be provided to the requester.

If you wish to **withhold** any information in scope of the request, it **must** be treated under the FOI Act (or other relevant access regime) and relevant exemption(s) must be identified.

### Is a request couched in the form of questions a valid FOI request?

- Yes, any request for information has the potential to be considered as a request under the FOI Act and requests couched in the form of questions are no different. You should consider what recorded information is held which would provide an answer to the questions posed (i.e. questions about a particular policy or decision may be found in a policy paper or ministerial submission).
- Where information is located it should be provided subject to any legitimate exemptions.
- **Never create information to respond to questions posed as this will leave the Department at risk of challenge about the accuracy of the information and may risk information being omitted but not being covered by a legitimate exemption.**
- Where only some of the information in a document is relevant to the questions posed it can be provided as an extract. Where no information is held which would answer the questions posed a response explaining that no recorded information is held should be sent.

### What if a request contains a number of elements?

- On occasions the Department will receive a request asking for information on different subjects. Although it would seem reasonable to treat it as a single request any request received in a single communication at a single point in time, there will be occasions when it would be unfair to the requester to do so.
- This is only where the request relates to different subjects and the possible use of section 12 arises.
- **The issue of whether to split requests into specific subjects will only arise if, were the request to be treated as a single request, the section 12 "appropriate limit" for compliance would be exceeded whereas if different elements of the requests were treated as an individual request section 12 would not apply.**
- In these circumstances, each element of a request should be grouped under a like subject, so for example, a request that comprises several elements may technically represent three or four separate requests for the purposes of considering the use of section 12. Taken

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together, compliance may exceed the appropriate limit, but treated individually some or all of the three or four separate requests would not when considered in the smaller subject-based grouping.

- In considering what to group together, the test is quite broad and if the information relates to a particular subject to any extent such grouping is appropriate.

### What if it is not clear what information the applicant is requesting?

- In some circumstances, applicants may not, at first, describe the information sufficiently precisely for you to be clear about what they want and you may have to ask them for further information to identify the information requested.
- If you inform the applicant that this is the case, then you are not obliged to comply with the request until clarification is received from the requester. ([See FOI/EIR compliance note 'Acknowledging and Clarifying Requests for Information'](#))
- If the applicant is unable to clarify their request so that it becomes clear what information they are requesting you do not have to continue to seek clarification beyond what is reasonable in the circumstances but you must ensure that you can demonstrate that you have done everything that can reasonably be expected to help the requester. If the requester fails to communicate any response to a request for clarification you are not obliged to comply.

### What if the Requests is in a language other than English or Welsh?

- Correspondence which is not in English (or Welsh) received from within the “local community” – i.e. the UK is to be returned asking the correspondent to reframe it in English. When the English version arrives, the 20 day clock starts if the correspondence proves to be a request for information.
- If it becomes clear that the applicant would have difficulty in framing their request or in understanding information in English the duty to advise and assist arises. Such circumstances may be apparent from the applicant’s request or in dialogue with the applicant when seeking clarification. It would be appropriate to suggest that assistance is sought from a friend more familiar with English, or from the Citizens Advice Bureau.
- Correspondence **received from outside the UK** which is not in English (or Welsh) is to be returned asking the correspondent to reframe it in English. If the correspondence then proves to be a request for information the 20 day clock starts. Your reply should be in English.
- The exception is where the MOD already has arrangements to correspond in the local language, or regularly provides information in that language. For example, the British Forces Liaison Organisation (Germany) replies in German to correspondence from German authorities and the German public. In these cases it would be reasonable to reply in the requestor’s language. Where the reply includes copies of documents there is no requirement for these to be translated.

### What if the Request is received in Welsh?

- Under the MOD Welsh Language Scheme we must meet an applicant’s request for a reply in Welsh. The cost of translation is borne by the requesting branch and may not be recovered from the applicant. The 20 days response time for FOI requests applies to requests in Welsh.

Further information:

See Section 3 – FOI Exemptions

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See ICO Guidance on Valid Requests:

[http://www.ico.gov.uk/for\\_organisations/guidance\\_index/freedom\\_of\\_information\\_and\\_environmental\\_information.aspx](http://www.ico.gov.uk/for_organisations/guidance_index/freedom_of_information_and_environmental_information.aspx)