



Ministry of Defence

MOD FOI/EIR Compliance Notes

CN17: FOI REQUEST CHECKLIST

Document history

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1	CIO-3-19-1-3	September 2012	September 2013

Day 1-2	Day 2 - 5	Day 6	Day 6 – 10	Day 10-15	Day 15-20	Day 20		
CONSIDERATIONS AND ACTIONS TO TAKE								
Request logged and acknowledgement sent to requester	Sensitive Request? Alert Press Office Contact CIO-CI-Access	Cost limit Search for information Held/not held Response sent	If information is not held or exceeds the cost limit <u>Provide a response</u>	If information is held, Policy Official considers whether information can be disclosed Where necessary draft Submission to Minister/Perm Sec	Publications Inform Web Team / Press Office? Collate Information for disclosure and provide draft response	Response approved via departmental process	Full response sent or permitted extension letter sent Information published on Department's disclosure log	File all correspondence
Name of Requester :			Date of Receipt :					
Case Reference:			TARGET DATE :					
			Contact No of Lead Official :					
Information Requested :								
<p>Checklist:</p> <p><input type="checkbox"/> <u>Establishing if the request is valid</u></p> <p>The first step in dealing with an FOI request is to establish whether or not the request fulfils the FOI request criteria :</p> <ul style="list-style-type: none"> • Requests for information do not need to mention the FOI Act. • Anyone can make a request. There are no restrictions for example on the nationality or location of the requester. • However, the request must be in writing (email, letter, or fax) and include the requester's name (pseudonyms can be refused¹) and postal address, or an email address to which a response can be sent. • The request should describe the information. • Consider whether the request should be dealt with under the Data Protection Act 1998 or the Environmental Information Regulations 2004. 								

¹ see Information Commissioner Guidance (only relevant to FOI requests) at: http://www.ico.gov.uk/upload/documents/pressreleases/pseudonym_foi_guidance_130109.pdf

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☐ **Cost limit (Section 12 of the Act)**

Will the cost of locating, retrieving, and extracting the information exceed the appropriate limit? 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.

The £600 limit covers the time taken to find, sort, edit or redact material. You cannot include the time taken to consider whether an exemption applies or the public interest test.

☐ **Establishing if the information is held**

A person may request any recorded information held by a public authority (or held by another on behalf of a public authority). Recorded information can be held in the form of documents, emails, notes, videos and audio tapes. **If the requester requires you to create information that is not already held at the time of receipt of the request, you are not obliged to create the information.**

☐ **Is the information already available on the Publication Scheme?**

Under Section 19 of the FOIA, all public authorities must adopt and maintain a publication scheme. The publication scheme sets out classes of information which the Department intends to make available to the public as a matter of course, the manner in which the information is to be made available and whether the information will be provided free of charge.

☐ **Is the information closely connected with the functions of another public authority?**

If the Department does not hold the information that has been requested, but you believe another public authority holds it, you should consider the best way to help the requester. In most cases this will mean contacting the requester and supplying the contact details of the public authority in question, having confirmed beforehand that they do hold the information.

☐ **Duty to provide advice and assistance**

- If the request is widely framed , you should consider whether :
- It would be helpful to consult with the requestor to try to narrow or refine the request, but only if the cost limit is exceeded;
- How long will it take to retrieve and extract the information requested?

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└ Is it a vexatious or repeated request?

There is no need to comply with a request if :

It is **vexatious**, that is :

- It would impose a significant burden on the public authority
- It clearly does not have any serious purpose or value
- It is designed to cause disruption or annoyance
- It has the effect of harassing the public authority
- It can otherwise fairly be characterised as obsessive or manifestly unreasonable

It is a **repeated request**, that is :

- Identical or substantially similar to a previous request from that person or persons you believe to be working together (unless a reasonable amount of time (roughly 3 months) has elapsed between them).

Further advice is available at: <http://www.justice.gov.uk/guidance/foi-procedural-vexatious.htm>

□ If we do disclose this information, do we need to consult any of the following :

- Press Office
- CIO Info-Access
- Private Office

└ If we do hold this information, should it be released?

This depends on whether :

- Any of the information is **personal information**, in which case the information is exempt under section 40 of the Act and falls to be considered under the Data Protection Act. Please see separate guidance at <http://www.justice.gov.uk/docs/foi-exemption-s40.pdf>.
- Requests for "**environmental information**" should be considered in accordance with Environmental Information Regulations 2004 (EIRs). Please see separate guidance at <http://archive.defra.gov.uk/corporate/policy/opengov/eir/guidance/full-guidance/index.htm>
- The information is **now** or **soon to be publicly available**, in which case you have the discretion to refuse the request (Section 21 or 22 of the Act), but should either provide a link to the information or provide the requester with details of where the information can be obtained.
- Any of the other **exemptions** in the Act apply,– see exemptions list attached

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There are 23 exemptions from the rights of access under the FOI Act. Further guidance on the exemptions can be found at: http://www.ico.gov.uk/for_organisations/guidance_index/freedom_of_information_and_environmental_information.aspx

Absolute exemptions [AE]: if an absolute exemption applies there is no obligation under the Act to consider the request for information further.

Qualified exemptions [QE]: are subject to the public interest test. Qualified exemptions do not justify withholding information unless, following a proper assessment, the balance of the public interest is against disclosure. When applying a qualified exemption the deadline may be extended to consider fully where the balance of the public interest lies.

List of exemptions :

Section 21	AE	<input type="checkbox"/>	Information accessible to applicant by other means
Section 22	QE	<input type="checkbox"/>	Information intended for future publication
Section 23	AE	<input type="checkbox"/>	Information supplied by, or relating to, bodies dealing with security matters
Section 24	QE	<input type="checkbox"/>	National Security
Section 26	QE	<input type="checkbox"/>	Defence
Section 27	QE	<input type="checkbox"/>	International Relations
Section 28	QE	<input type="checkbox"/>	Relations within the United Kingdom
Section 29	QE	<input type="checkbox"/>	The Economy
Section 30	QE	<input type="checkbox"/>	Investigations and proceedings conducted by public authorities
Section 31	QE	<input type="checkbox"/>	Law Enforcement
Section 32	AE	<input type="checkbox"/>	Court Records etc
Section 33	QE	<input type="checkbox"/>	Audit functions
Section 34	AE	<input type="checkbox"/>	Parliamentary privilege
Section 35	QE	<input type="checkbox"/>	Formulation of Government Policy
Section 36	QE*	<input type="checkbox"/>	Prejudice to effective conduct of public Affairs (*absolute exemption for information held by House of Commons or House of Lords)
Section 37	QE	<input type="checkbox"/>	Communications with Her Majesty, etc, and Honours
Section 38	QE	<input type="checkbox"/>	Health and Safety
Section 39	QE	<input type="checkbox"/>	Environmental Information
Section 40	QE	<input type="checkbox"/>	Personal Information
Section 41	AE	<input type="checkbox"/>	Information provided in confidence
Section 42	QE	<input type="checkbox"/>	Legal Professional privilege
Section 43	QE	<input type="checkbox"/>	Commercial Interests
Section 44	QE	<input type="checkbox"/>	Information the disclosure of which is otherwise prohibited by law

If it's a qualified exemption, have you considered the Public Interest Test (PIT) ? i.e. would release of the information cause any harm (prejudice) ? And, even if it would, does the public interest still favour disclosure ?

The burden is on the Department to show that the public interest in withholding the information is greater than the public interest in disclosure. Where possible use specific arguments i.e. what harm/prejudice would occur by releasing this information

Note: If balance falls 50:50, then information should be released.

Further information is available at : <http://www.justice.gov.uk/information-access-rights/foi-guidance-for-practitioners/dealing-with-a-request>

IF REQUEST IS LATE, PLEASE GIVE REASONS:

IF A PUBLIC INTEREST TEST EXTENSION HAS BEEN APPLIED, PLEASE GIVE REASONS:

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Reminder : to include the standard complaints paragraphs at the end of your response.

"If you are unhappy with the result of your request for information, you may request an internal review within two calendar months of the date of this letter by writing to the:

Deputy Chief Information Officer, 2nd Floor, MOD Main Building, Whitehall, SW1A 2HB (e-mail CIO-FOI-IR@mod.uk).

If you remain unhappy with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House Water Lane, Wilmslow, Cheshire, SK9 5AF."

Any other comments :