

1.0 Scope

This procedure defines how requests for information must be handled to ensure the NDA complies with the requirements and legal obligations of the:

- Freedom of Information Act 2000
- Environmental Information Regulations 2004

2.0 Responsibilities & Definitions

EIR Environmental Information Regulations

FOI Freedom of Information

Redaction the preparation for publication of a document, involving the editing or removal of certain information.

Qualified Person individual designated by government to approve the use of the section 36 exemption of the Freedom of Information Act.

Livelihood the NDA Electronic Document and Records Management System.

Information Access Manager (or Deputy) is responsible for overseeing NDA compliance with the EIR and FOI Act.

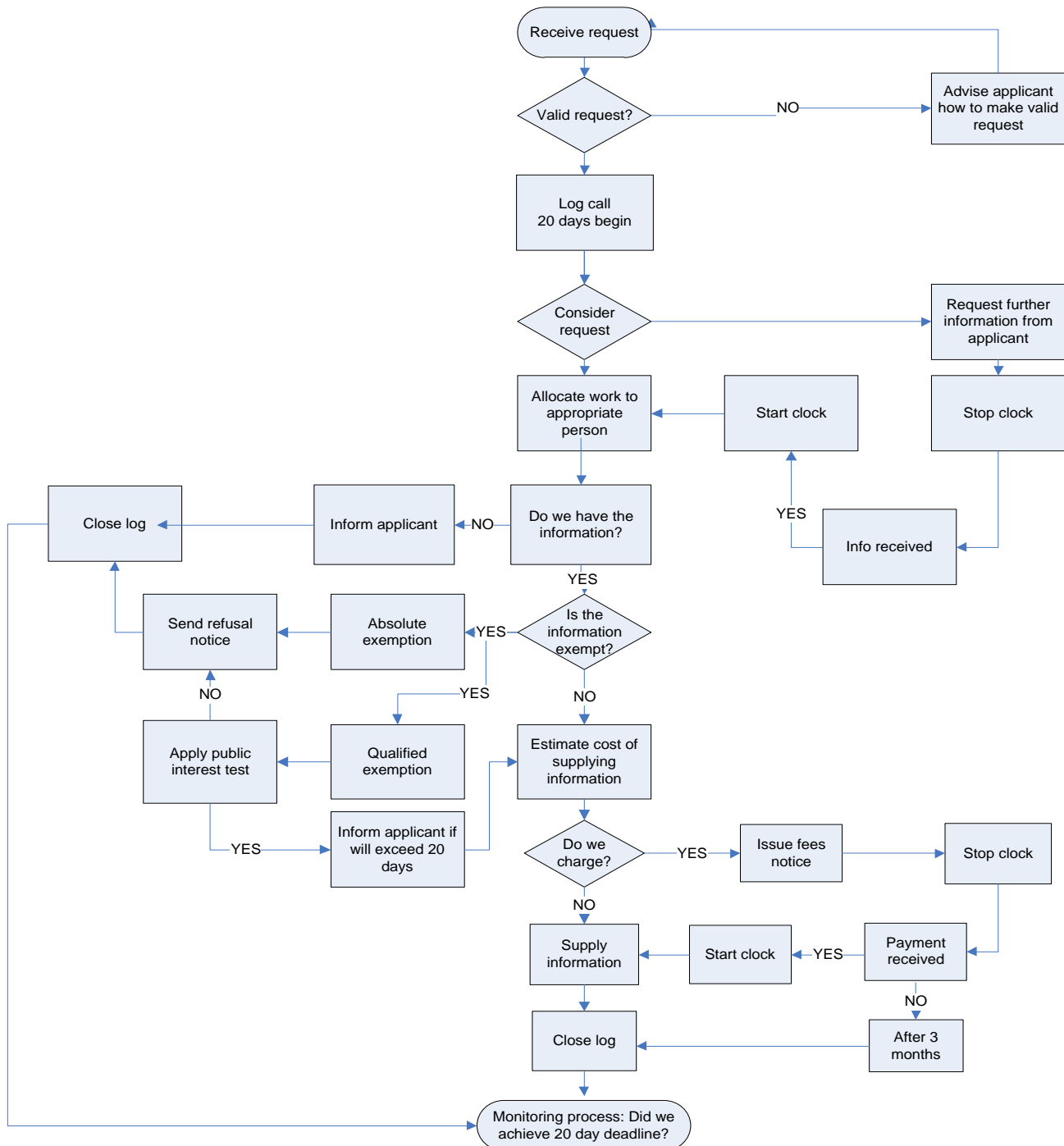
Chief Executive Officer is the designated qualified person who can apply section 36 exemption of the FOI Act (see appendix 5.1).

Legal Department provide advice on the application of FOI Act and EIR exemptions.

Directors are responsible for ensuring that their directorates are fully compliant with this procedure.

NDA employees are responsible for ensuring requests for information are processed appropriately in line with this procedure. If an employee's assistance is required to answer a request they must fully cooperate with the Information Access Manager within the timescales set.

3.0 Procedure



3.1 Receiving requests

3.1.1 Response time

FOI and EIR requests must be answered within 20 working days from receipt. However, we are required to respond as “promptly” as practicably possible.

Please ensure that applicants are informed of any potential delays and ideally provide estimated completion dates i.e. “we hope to be in a position to provide a final response by ...”

3.1.2 Recognising FOI and EIR requests

Many of the enquiries received by the organisation will fall within the scope of routine business enquiries and should be handled as such. However, it is important that requests that would fall within the scope of the EIR and FOI Act are recognised and handled in line with this procedure. This requires recipients to recognise what constitutes an EIR or FOI request.

3.2 Valid FOI requests have to:

- be received in written format (email, fax, letter etc.)
- contain contact information
- adequately describe the information required. If the description is not adequate then we should contact the applicant and ask them to provide us with more information or clarification. While we are waiting for them to respond the 20 day count is paused.

The key distinctions between and FOI request and everyday business enquiries are:

- they require some investigation to produce an answer.
- the information requested is not in the public domain.
- the NDA would be the only source of this information.
- the NDA does not currently publish the information requested, or intend to do so in the future.

3.3 Valid EIR requests:

- can be received both in **verbal** and in written format.
- relate specifically to the environment e.g. soil, air, water.
- or anything which affects the environment such as emissions and discharges.

3.4 Requests from the media

Requests from the media must be referred to the Communications department.

3.5 Invalid requests

Applicants do not need to be aware of their rights under the EIR or FOI Act. We are obliged by the EIR and FOI Act to inform applicants of their rights and to assist them in making valid requests. We must also have consideration for disability discrimination legislation and assist anyone with a disability make their request valid e.g. by offering to write down a request and send it to them for verification.

What would constitute an invalid request:

- **Requests for information which do not meet the criteria set out in 3.2 and 3.3** do not have to be handled in line with this procedure, but we do need to ensure that we have satisfied our duty to “assist and advise” applicants to make “invalid requests” valid if possible.

- **Information reasonably accessible by other means** - cannot be requested under FOI. Requestors should be redirected to suitable sources of this information.
- **Information which we have a stated intention to publish** at a future date cannot be the subject of FOI requests. Inform requestors when and how they may obtain this information.
- **Requests for personal information** - if someone asks to see all the information we hold about them, this falls under the DPA. The requestor will need to submit what is known as a “subject access request” to the Information Access Manager. Their identity will need to be checked before we supply any information.
- **Vexatious requests** - if the same person asks for the same, or very closely related information within a short space of time, this would be considered a vexatious request. These requests will require a refusal notice see 3.10.

If you are in any doubt as to whether a request falls within FOI or EIR regimes, contact the Information Access Manager or Legal Department for advice.

3.5.1 Acknowledging receipt

Receipt of all FOI and EIR requests should be acknowledged to the applicant within 5 days of receipt (unless a response or request for clarification, are sent within this time).

3.6 Recording requests

- All valid requests must be logged by the Information Access Manager (or Deputy) (instructions re. how to do this can be found within Livelink).
- Copies of all requests and responses must be forwarded to enquiries@nda.gov.uk mailbox, so that they can be recorded.

3.7 Assigning responsibility for answering requests

- If you can answer the request yourself please draft a response and forward it, along with the original request, to the Information Access Manager via the enquiries@nda.gov.uk mailbox (taking into account any applicable exemption when doing so, see 5.1 and 5.2). N.B. Only the Information Access Manager or Deputy can refuse a request or withhold information see 3.10.
- If it isn't clear what the requestor wants, the Information Access Manager must contact the applicant to seek clarification of what is required. While we are waiting for a response the 20 day count stops.
- If you are unable to answer the request it must be forwarded to the Information Access Manager promptly via the enquiries@nda.gov.uk mailbox. The Information Access Manager will then assign responsibility for answering the request to an appropriate member of NDA staff.
- If the Information Access Manager requests assistance to answer an enquiry, from any member of NDA staff, they must cooperate fully and in a timely manner as we are legally obliged to meet the 20 working day deadline set out in the EIR and FOI Act.

3.8 Information discovery

The FOI Act requires the NDA to supply “information held” by the organisation. When a request is received the NDA must first discover what relevant information is held. The NDA does not have to “generate” information in response to a request e.g. carry out statistical analyses or generate one off reports. However, if the information can be retrieved by running a straight forward database search or by carrying out simple calculations, then this should be undertaken.

The Information Access Manager may require members of the NDA to assist in searching for information. Some requests may require the retrieval of emails, correspondence or documents stored on your laptop. If a request is made which requires this type of search NDA employees must comply.

It is a criminal offence to destroy information once a FOI or EIR request has been made for it.

If no relevant information is found, the NDA must respond to the applicant and inform them that the NDA does not hold the requested information. This requires a formal notification by the Information Access Manager (templates in Livelink).

Third party consultation

If the information requested originates from or relates to a third party i.e. non-NDA then that party must be consulted before release. They should be contacted and informed that a request has been made and what information it relates to. They should be given an opportunity to comment/advise if in their view the information should be released and asked to complete a "redaction form" if they believe information should be withheld.. Although, the views of a third party will be taken into account when making a decision re. applying exemptions, the NDA reserves the right to apply exemptions at its discretion in accordance with FOI and EIR.

3.9 Considering exemptions

The EIR and FOI Act give everyone the right to request information held by public authorities, however they do set out a number of exemptions to this right (a full list is provided in appendix 5.1 and 5.2).

Protectively marked information is not automatically exempt. Only information which falls within an EIR or FOI exemption category can be withheld. If you have a document which requires "redaction" before release the Information Access Manager must be informed.

If it is felt that an exemption may apply or that the information requested should not be disclosed advise the Information Access Manager as soon as possible.

3.10 Refusing requests

Any exemption must be applied in line with section 17 of the FOI Act and regulation 14 of the EIR within the 20 working day time limit. A redaction form should be completed (unless the exemption is a straightforward application of an absolute exemption, e.g. remove name or building number).

Decisions relating to the application of exemptions and the public interest test will be made collectively by the:

- Information Access Manager (or Deputy) and
- Legal Department FOI advisor
- taking into account advice from the Person who holds/owns the information,

unless a Section 36 exemption applies and then the Chief Executive (as the NDA's designated "qualified person") will make the decision.

If the exemption requires a public interest test (see appendix 5.1 and 5.2) this must be done where possible within the 20 day deadline. In the event that this will take longer than 20 working

days the requestor should be notified and given a date by which the NDA expect to make a decision (in accordance with s.17 (2) of the FOI Act and Reg. 14 of EIR).

All refusals must be made by the Information Access Manager (or Deputy), by sending an appropriate refusal notice to the requestor. This notice must take into account requirements of the exemptions being applied and s.17 of the FOI Act and regulation 14 of the EIR. The notice should be accompanied by any information which is not exempt.

Refusal notices must state that complaints should be directed to the Information Access Manager in the first instance and inform the requestor of their right to complain to the Information Commissioner's Office if they are not satisfied with our internal review (procedure IMPR05).

Appropriate template letters, forms and example refusal notices can be found in Livelink.

3.11 Estimating costs

Whenever possible the NDA will supply information for free. However, the NDA reserves the right to charge in line with the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (SI 2004 no.3244). If a request will require an extensive and time consuming search, then the NDA may wish to charge for staff time. Please inform the Information Access Manager before a search is begun if it is estimated it will require a considerable amount of time.

Section 12 of the FOI Act places no obligation to respond to requests if the charges that would be incurred in supplying the information would exceed the appropriate limit (£450), as set out in SI 2004 no.3244 Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. Any decision to refuse on these grounds would be made in line with point 3.10 of this procedure.

3.12 Supplying information

If no fee is to be charged and no exemptions apply (see 5.1 and 5.2) the information must be supplied to the requestor.

If the requestor has stated a format preference, the NDA is required to comply with this as far as practicably possible. If it isn't possible, supply the information in another suitable format and explain to the requestor why it wasn't possible to comply with their preference.

A cover note should be sent with all information supplied (templates are supplied in Livelink).

3.13 Completion

Once all transactions are complete (the requestor has been informed of our decision or supplied with the information requested), the request log in Livelink FOI folder must be closed. This must be done as soon as the work is complete to stop the 20 working day count.

3.14 Monitoring

Performance will be monitored to ensure that, wherever possible, requests are dealt with within 20 working days from receipt.

4.0 Documentation

Recording requests is the responsibility of the Information Access Manager and their designated deputies. A case file should be created in Livelink for each request into which

copies of requests, responses, completed Outlook Task and Redaction Forms (as appropriate), should be saved.

Records of requests received and outcomes will be kept for a minimum of 10 years.

5.0 Appendices

5.1 Exemptions under the FOI Act

Detailed guidance on exemptions and how they should be applied can be found in the Information Commissioner's Office, FOIA "Awareness Guidance" series (available from the ICO website). Please also refer to the Freedom of Information Act 2000, part II.

Exemptions where the public interest test applies (qualified exemptions)	
When a public authority considers that the public interest in withholding the information requested outweighs the public interest in releasing it, the authority must inform the applicant of its reasons, unless to do so would mean releasing the exempt information.	
FOI Act section	Information covered by the exemption
Section 22	Information intended for future publication – A stated intent to publish must be made in advance of a request being received.
Section 24	National security (other than information supplied by or relating to named security organisations, where the duty to consider disclosure in the public interest does not arise).
Section 26	Defence.
Section 27	International relations.
Section 28	Relations within the United Kingdom.
Section 29	The economy.
Section 30	Investigations and proceedings conducted by public authorities.
Section 31	Law enforcement.
Section 33	Audit functions – applies to authorities who are responsible for auditing other public authorities.
Section 35	Formulation of government policy.
Section 36	Prejudice to effective conduct of public affairs (except information held by the House of Commons or the House of Lords).
Section 37	Communications with Her Majesty the Queen.
Section 38	Health and Safety – information is exempt if its disclosure would be 'likely' to endanger the health or safety of any individual.

Section 39	Environmental information as this can be accessed through the Environmental Information Regulations.
Section 42	Legal professional privilege.
Section 43	Commercial interests – information is exempt if it constitutes a ‘trade secret’. Information is exempt if disclosure would be likely to prejudice the commercial interests of any person.

Exemptions where the public interest test does not apply (absolute exemptions)	
Section of the FOI Act	Information covered by the exemption
Section 21	Information accessible to an applicant by other means.
Section 23	Information supplied by, or relating to, bodies dealing with security matters.
Section 32	Court records.
Section 34	Parliamentary privilege (a certificate signed by the Speaker of the House, in respect of the House of Commons, or by the Clerk of the Parliament in respect of the House of Lords, is conclusive proof that the exemption is justified.)
Section 40	Personal information – People cannot access personal data about themselves under the Freedom of Information Act as there is already access to such information under the Data Protection Act 1998. Personal data about individuals cannot be released under FOI if to do so would breach the Data Protection Act.
Section 41	Information provided in confidence – This applies to information supplied to the authority by any other person, the disclosure of which would constitute an actionable breach of confidence.
Section 44	Prohibitions on disclosure where a disclosure is prohibited by an enactment or would constitute contempt of court.

5.2 Exemptions under the EIR

Exceptions to the duty to disclose environmental information	
Regulation no.	Description of exemption
12 (3)	Information requested includes personal data of which the applicant is not the data subject, the personal data shall not be disclosed otherwise than in accordance with regulation 13.
12 (4) (a)	The public authority doesn't hold the information.
12 (4) (b)	The request for information is manifestly unreasonable.
12 (4) (c)	The request for information is formulated in too general a manner and the public authority has complied with regulation 9.
12 (4) (d)	The request relates to material which is still in the course of completion, to unfinished documents or to incomplete data.
12 (4) (e)	The request involves the disclosure of internal communications (includes communications between government departments).
12 (5) (a)	Adversely affect international relations, defence, national security or public safety.
12 (5) (b)	Adversely affect the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature.
12 (5) (c)	Adversely affect intellectual property rights.
*12 (5) (d)	Adversely affect the confidentiality of the proceedings of that or any other public authority where such confidentiality is provided by law.
12 (5) (e)	Adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.
12 (5) (f)	Adversely affect the interests of the person who provided the information.
*12 (5) (g)	Adversely affect the protection of the environment to which the information relates.
To the extent that the environmental information to be disclosed relates to information on emissions, a public authority shall not be entitled to refuse to disclose that information under an exception referred to in paragraphs (5)(d) to (g).	