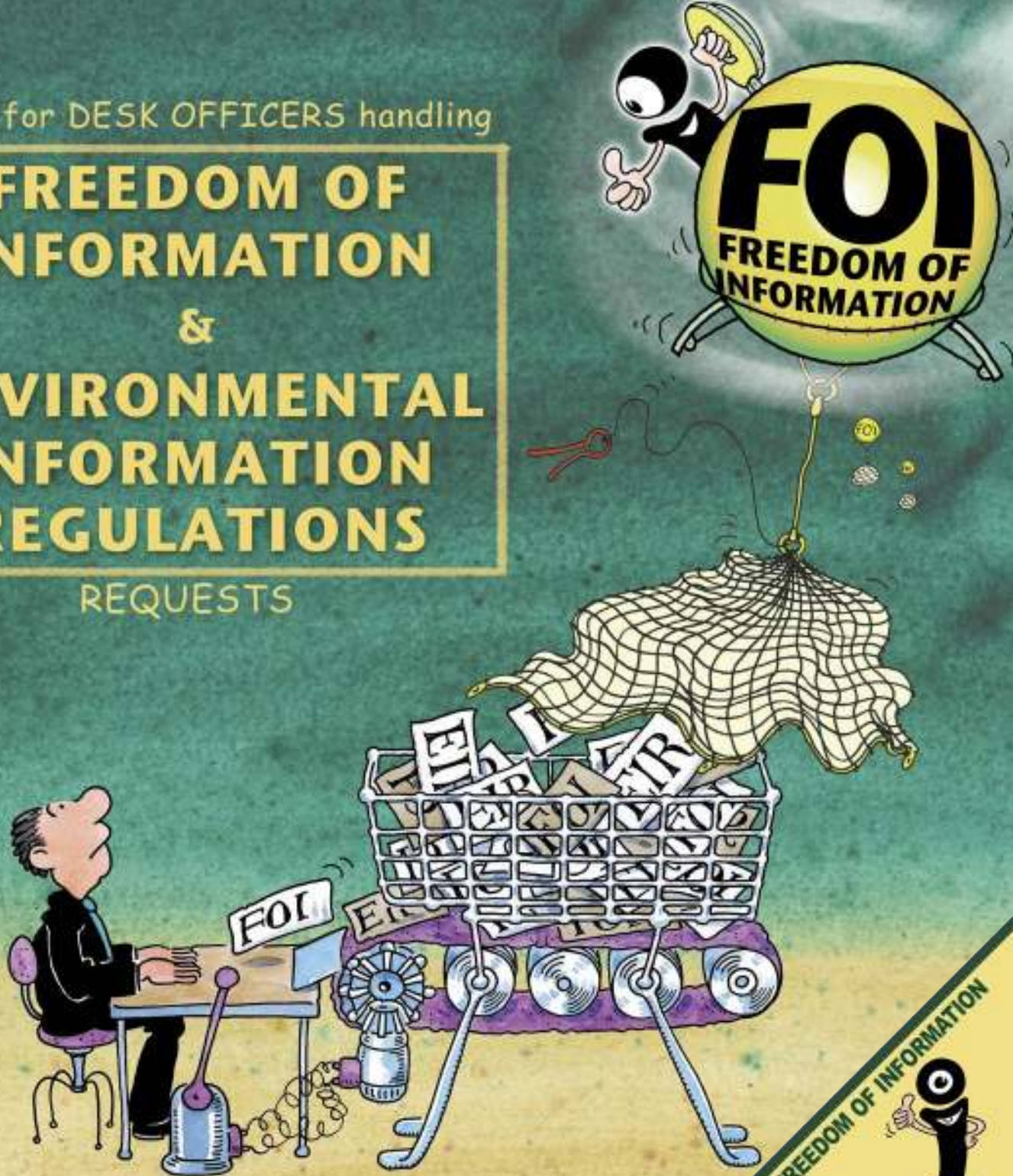


Hints for DESK OFFICERS handling

FREEDOM OF INFORMATION & ENVIRONMENTAL INFORMATION REGULATIONS

REQUESTS



FREEDOM OF INFORMATION



Key principles in answering requests for information

Ensuring that MOD answers requests for information promptly is a shared responsibility.

- Know your FOI and EIR Focal Points
- Pass on without delay any request which is not your responsibility
- Practise good records management to ensure information can be quickly identified and retrieved.
- Remember that the 20 working days limit begins as soon as a request is received by MOD

At the time of printing (November 2004) the new EIRs await Parliamentary consideration. This booklet is therefore based on the final draft which could be subject to some change.

Further Guidance

In the first instance you should direct any queries relating to FOI to your FOI Focal Point – contact details are provided on the back cover.

When responding to a request you should always refer to the more comprehensive "Access to Information Guidance Notes".



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1. Introduction

From 1 January 2005 all written requests for information received by the Ministry of Defence (MOD), its agencies and Trading Funds and by the Armed Forces will need to be answered in accordance with the Freedom of Information (FOI) Act 2000 or the new Environmental Information Regulations (EIRs). The only exception will be requests for personal data (Subject Access Requests) which must be handled under the terms of the Data Protection Act 1998. In many respects the new legislation will not fundamentally alter the way the Department interacts with members of the public. For many years we have been required to respond to requests for information (referred to in the rest of this booklet as "requests") in accordance with the Code of Practice on Access to Government Information (the Code), and the current EIRs (1992). These regimes already establish the principle that information should be disclosed wherever possible.

The new legislation is primarily about a culture change from "need to know" to "right to know". For the MOD it represents a balance between greater openness and transparency of decision making on the one hand and the need to protect information where disclosure would cause harm or otherwise be contrary to the public interest on the other. There will be valid reasons why much information held by MOD cannot be disclosed. It is important, therefore, for you to know how and where to draw the line. MOD must fulfil its legal obligations

but we must also be conscious of the potential dangers. This will require careful judgement and, in some cases, consultation with senior officers or officials.

It is also important to remember that the legislation could bring benefits. By implementing it correctly and by adopting a policy of greater openness as far as we reasonably can, we can build greater public trust and confidence in the MOD.

In a department as large and diverse as the MoD it is impractical for all areas to adhere to a single process for handling requests. In some areas, responsibility will lie with nominated desk officers, others will have a centralised Information Access cell, and some areas will operate a combination of the two. Whatever local arrangements are in place, the same principles apply. This booklet is intended to give an overview of the actions required and the factors that need to be taken into consideration across the board. The precise allocation of responsibilities will be confirmed within local protocols, and this booklet should therefore be regarded as complementary to those more specific arrangements. The generic "you" in the text could therefore refer to an individual or a team.

When responding to a request you should refer to the more comprehensive "Access to Information Guidance Notes". For further advice consult your FOI Focal Point.

2. *What information is subject to the FOI Act and EIR?*

ALL recorded information held by, or on behalf of, MOD is within the scope of the Act and the Regulations (although both recognise that the disclosure of personal data is subject to the Data Protection Act). The legislation applies regardless of the age, format, origin or classification of information. It covers files, letters, databases, loose reports, e-mails, office notebooks, videos, photographs, wall charts, come-in-hand files, etc. It includes closed files and archived material as well as information in current use. There are two general archives for MOD records; the Top Secret Archive run by the Corporate Memory staff within DG Info, and the archive run for MOD by TNT(UK)Ltd. A searchable database of the latter is currently being compiled: the intention is to make this accessible to staff across the MOD.

Remember, you are responsible for considering all information held by MOD when a request for information is received – historical information relating to your area of responsibility, as well as information in current use. In addition to information that has been consigned to the archives, remember that other parts



of MOD may hold information that is relevant to a request: the onus is on you to consult them.

You should note that in addition to information that is produced by MOD, the legislation applies to information we have received from others. This includes other countries, companies, other government departments and members of the public. Such information must therefore be considered when it is relevant to a request. In general, it will be necessary to consult originators about the prospect of disclosure. Their views will be important if it is necessary to assess the balance of public interest in the disclosure of information, but you should note that they do not have a veto – the final decision on whether to release or withhold information rests with the MOD.

3. FOI & EIR: key duties

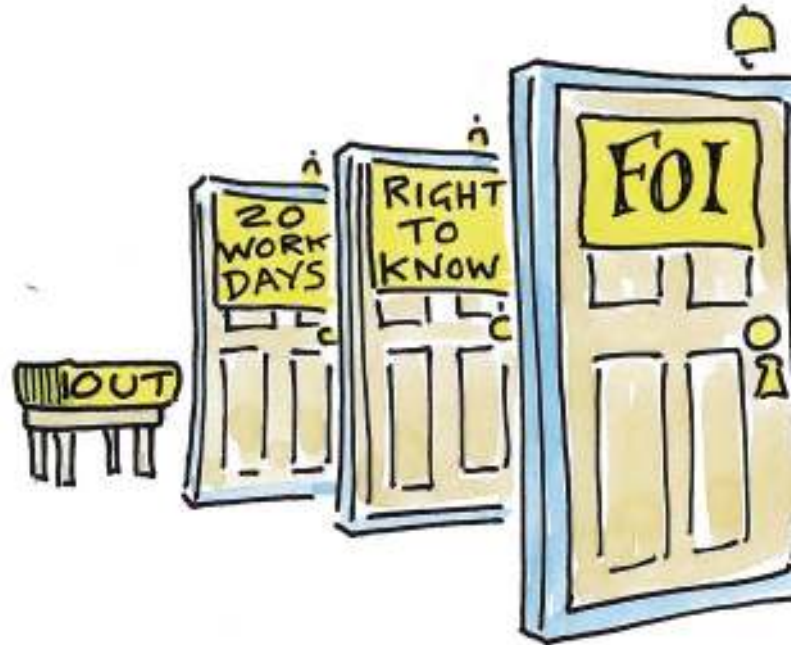
This Guide covers both FOI and EIR, as there are many similarities between the two regimes. One key point to note is that any request for “environmental information” must be answered in accordance with the EIR rather than the FOI Act. It is possible that in some cases both regimes will be relevant. If you are dealing with a mixed request, it is essential to be clear which parts of the information fall under which regime so as to apply the correct exemption or exception if information has to be withheld. If in doubt contact your FOI Focal Point.

Provision of information on request

Under FOI there is a requirement to provide a substantive response to any request for information within 20 working days. There is some scope to extend this timescale if the balance of public interest is being assessed, but all requests need to be actioned promptly. Bank Holidays, but not Privilege Days, are excluded from the calculation of working days. The EIR also require requests to be answered within 20 working days but there is provision to extend the response time to 40 working days for large or complex requests.

Proactive release of information

As well as responding to requests, all public authorities must establish and maintain a Publication Scheme. This represents a commitment to release information proactively. MOD’s Publication Scheme which covers both FOI and EIR can be found at www.foi.mod.uk.



“Environmental information” is any information on
(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including the interaction between these elements.

(b) factors such as substances, energy, noise, radiation or waste affecting or likely to affect the elements of the environment.

(c) measures such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect or protect the elements of the environment.

(d) reports on the implementation of environmental legislation.

(e) cost-benefit and other economic analyses and assumptions used within the framework of environmental measures and activities.

(f) the state of human health and safety, including the contamination of the food chain, conditions of human life, cultural sites and built structures in as much as they are or may be affected by the state of the elements of the environment.



4. *Identifying and recording an FOI or EIR request*



Any correspondence could include a request for information. If it is written (this includes e-mail), legible, gives the name of the applicant, an address for reply (which could be electronic), and includes a description of the information required, then it will fall within the scope of the legislation. It is very important to note that the correspondent does not need to mention the FOI Act or the EIRs. Also note that the EIRs do not specify that requests must be in writing. This means that telephone requests on environmental matters will also be valid (although in practice you should make a written record of any verbal requests received). Indeed, as noted in Section 8 below, public authorities are under a general duty to assist anyone who has made a request or proposes to request information. You must therefore keep this in mind if you receive any approach from a member of the public.

To ensure the active management of requests and for audit purposes, an Access to Information Toolkit (AIT) is being established. Separate guidance will be issued on the operation of the Toolkit but the basic requirement is for all FOI and EIR requests to be logged on first receipt and then at all key stages. Responsibility for taking this action will vary from area to area. You should therefore refer to local instructions or consult your FOI Focal Point if you are unclear about the process. However it is very important to draw a distinction between requests and routine correspondence. If a letter from one of your current business contacts (such as a contractor doing work for MOD or another government department)

includes a request for information it will not usually be necessary or appropriate to handle this in accordance with the legislation. Similarly requests for information that can be provided without any question – such as recruitment brochures, press releases, and the text of public speeches do not need to be tracked via the AIT. Business as usual should be dealt with as it is at present.

As a 'rule of thumb':

- If any of the information requested cannot be disclosed without active deliberation then the request should be formally tracked via the AIT.
- If it seems likely that information will have to be withheld the request must be logged on the AIT.

NOTE: The Toolkit will not be used to track PQs. For guidance on handling PQs go to: [http://defenceintranet.diiweb.r.mil.uk/DefenceIntranet/Admin/RespondToRequestsForInformation/AnswerParliamentaryQuestions\(PQs\)/](http://defenceintranet.diiweb.r.mil.uk/DefenceIntranet/Admin/RespondToRequestsForInformation/AnswerParliamentaryQuestions(PQs)/) or contact the Parliamentary Branch on 020 7218 1887/ 1990/ 1992

5. *The Public Interest Test*

Both the FOI Act and EIR make a presumption towards disclosure. Information should therefore be released wherever possible. However, it would clearly not be appropriate for all information to be made public. This is recognised by “exemptions” in the FOI Act and “exceptions” in the EIR (see Section 11). The nature of much of the work done by MOD means that the exemptions and exceptions are likely to be relevant to a great deal of the information we hold.

A few of the FOI exemptions are “absolute”, meaning that the information can be withheld without considering any public interest in disclosure. Nevertheless it is important to ensure that the decision to cite an absolute exemption is valid as this may itself be challenged, and even though an exemption is absolute, its application is not obligatory. The majority of the exemptions in the FOI Act, and all of the EIR exceptions are “qualified” and, if applicable, pose two further questions - would release of the information cause any harm? And, even if it would, does the public interest still favour disclosure?

If there is no harm associated with release, then it should usually be possible for the information to be provided to the applicant. Even if it is believed that there may be some harm associated with disclosure, the public interest in withholding the information has to outweigh the public interest in releasing it. In

some cases this will be clear-cut, but quite often it will not. There is no fixed definition of “public interest” or of “harm” and this assessment will essentially be a matter of judgement on a case by case basis. This judgement can best be made by the policy staffs who lead on the subject concerned.

Factors which are likely to argue in favour of disclosure will include furthering public understanding of key policy proposals or decisions, as well as promoting accountability and transparency about the decisions taken by public authorities and about the use of public money. There is also an accepted public interest in allowing individuals to understand decisions which affect their lives or which have an effect on public health and safety. However it is also accepted that what the public are interested in and what is in the public interest are not necessarily the same.

Factors which could tip the balance against disclosure include where this might endanger the safety of personnel, undermine effective government by discouraging frankness and candour in internal communications, or threaten the Department's competitive position in a commercial matter.

When a qualified FOI exemption (or any EIR exception) is cited, the balance of factors for and against disclosure must be explained in your reply to an applicant.

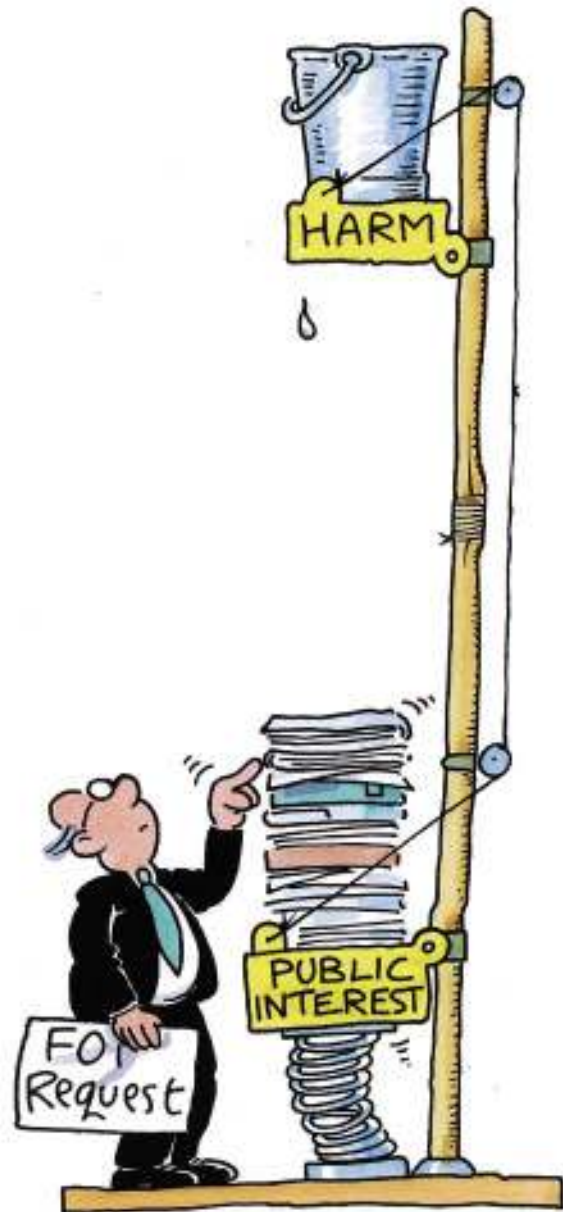
Disclosing Information

Before releasing information you must be satisfied that you have the necessary authority to do so – check with your line manager or FOI Focal Point. This is especially important if information proposed for release has a protective marking (there is a process for downgrading such material; you will need to fill out MOD Form 171), if the material was originated outside the MOD, or was produced under the terms of a collaborative or other arrangement.

Disclosure of any commercial information, particularly if supplied by or relating to industry, or which might reasonably be considered to harm MOD or industry's commercial interests, must be authorised at 1* level after following the processes set out in the FOI Commercial Guidance Note.

Withholding Information

A decision to withhold any information (and so to cite an exemption / exception) should normally be endorsed at 1* level (or equivalent) or above.



6. Who is responsible for answering a request?

Requests should be answered by the area which has the policy lead on the subject. This will ensure that the implications of disclosure and, where necessary, the balance of public interest, are assessed by those best qualified to make this judgement. It will also ensure that there is full awareness of any precedents and that there is consistency in the responses given.

If you receive a request on a subject that is not within your remit, contact your FOI Focal Point. DO THIS QUICKLY! The 20 working days period starts when the request is received by MOD, not when it reaches the 'right' desk.

If the information requested requires the involvement of more than one policy area, or if it involves information provided to MOD by a third party (maybe a contractor, another government department, or a foreign government), it will usually be necessary to consult all those concerned.

In some cases, it will be necessary to consider the implications of disclosure beyond the boundaries of MOD. The Department for Constitutional Affairs (DCA) will operate a 'Clearing House' to consider and give direction on requests that have wider implications. This would include cases which:

- would set precedents across government
- involve a sensitive case of potentially high profile
- involve papers of previous administrations
- have been received by several government departments.



If you receive a request in one of these categories the Info-Access team in DGInfo must be informed since they are the designated point of contact with the Clearing House. Again, this action must be taken without delay.



Remember that the response you give will be on behalf of the MOD as a whole. You must therefore consider all information held by, or on behalf of, MOD not just that held within your area. This also means that you will need to assess the balance of public interest in light of the views expressed by others.

It is very important to consider the possibility that releasing (or withholding) information in response to a request could have wider implications. The normal procedures for informing Ministers and Senior Officials should therefore be followed when appropriate. This will be especially important if there is a prospect that the response may draw criticism or cause embarrassment to the MOD.

In particular if the information to be disclosed (or the fact that information is being withheld) is novel, contentious or in any other way likely to be newsworthy you **must** contact the relevant press office, wherever possible several days in advance of release. DCI Gen 200/04 gives press office contact details. Discussion with press officers will ensure that appropriate briefing and lines to take are available.

7. Information or Documents?

The legislation gives an entitlement to information rather than documents. However, releasing a copy of a document will often be the easiest way of disclosing information. It is also worth bearing in mind that many applicants will perceive documents as having more authority than distilled information. You should therefore release a copy of the original document whenever it is possible to do so.

Remember that although most information is held in the form of documents, it is also necessary to consider other media such as video tapes, micro-fiche or photographs. This will obviously have a bearing on the manner in which any information is disclosed.

Also note that the FOI Act allows applicants to express a preference about the form in which information is communicated. In particular, information may be requested in the form of original documents, as a summary or digest, or via an opportunity to inspect the record containing the information. Where practicable and reasonable to do so, you should meet any such request.

In general, you will have the following options when releasing information:

i. If it is not necessary to claim any exemptions and the whole document is relevant to the request, release it in its entirety.

ii. If sections of the document are exempt, redaction (i.e. removal by cutting out) of these sections and release of the remainder. You should annotate any redactions with the exemption(s) / exception(s) that apply.

iii. If redaction would make the document incomprehensible or if the relevant information is contained within a small section of a document or dispersed throughout several documents, production of a summary.

Redacting Information

There is need for care when information has to be redacted. Be aware that :

- Deletions in MS Word can be reversed if a document is sent electronically.
- If text is blacked out with a marker pen it can remain legible when photocopied.

If a redacted document is transmitted electronically, it should be saved as a pdf file (using Adobe Acrobat Writer), or scanned and saved as an image file. The safest way to redact hard copy documents is by copying the original document, cutting out the redacted sections and photocopying the remaining text.



It is possible that some information contained in a document will not be relevant to the request that has been made. In this case it will generally be appropriate for these sections of the text to be removed. However, if you are satisfied that there is no sensitivity about the additional information, consider releasing the whole document.

You should also bear in mind MOD's obligations under other legislation when responding to requests for information. In particular the Disability Discrimination Act is now in force. As far as possible, the department has a duty to assist applicants by ensuring they receive the information in the form most suitable for them.

8. *What to do when a request is unclear*

There is a requirement under both FOI and EIR for applicants to describe the information they want. The legislation also puts a duty on public authorities to provide advice and assistance to people who have made, or propose to make, a request for information. These parallel obligations will be most evident when a request for information is unclear or it seems possible that it could be satisfied by directing the applicant to another source of information.

day period will not commence. It will often be helpful to explain what information is readily available, or to explore ways in which a request could be made more specific. This will be particularly important if the original request would be refused due to excessive cost. You should keep a written record of any conversations with the applicant.

The key requirement is to establish a dialogue with the applicant. If clarification of the request is needed in order to identify and locate the information, this must be requested promptly: in the interim the 20 working



9. *What about Fees?*

Fees regulations made under the FOI Act will say that requests should be processed without any charge unless the effort involved exceeds £600. The range of activities that can be taken into consideration in determining the cost of effort is very limited. It is legitimate to count the time involved in retrieving and searching for information, but not the effort associated with deciding whether information should be released or withheld.

Above the £600 limit, there will be no requirement to proceed with a request, but, as noted above, it will be appropriate to assist the applicant in these circumstances to narrow the scope of the request.

Under the EIR there is no "upper limit" for dealing with requests. All valid requests must be dealt with and any charges imposed must be reasonable.

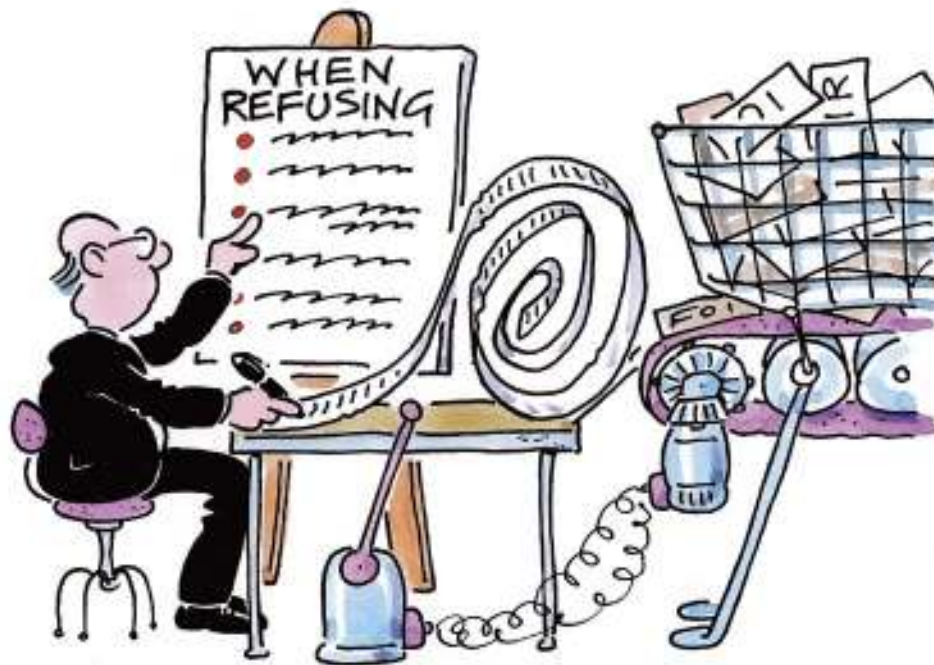
Note: The process for determining costs is explained more fully in the Access to Information Guidance Notes



10. What to do when information is refused

There may well be very good reasons for withholding information but this must be justified to the applicant. It is not sufficient for your reply to simply include a broad statement such as: "for reasons of national security". As a minimum, you must identify a specific exemption/exception as the basis for withholding information and explain why it applies.

If the exemption is not absolute, your reply must set out the "public interest" factors for and against disclosure that were considered. The only exception to providing the reasons for withholding information is if this action would in itself involve disclosure of information that is exempt.



It is very important to determine whether the exemption or exception genuinely applies to all of the information requested. MOD will be criticised for withholding complete documents and blocks of information if this cannot be justified. If it is possible to release some of the information, you should do so.

Protective markings and security classifications will determine how information is stored and managed within MOD; but they do not constitute an automatic reason for citing an exemption. Such markings reflect the protection of the most sensitive information in the document required at the time it was created. You will need to give careful consideration as to why the information was marked with a classification and whether this is still relevant; and wherever possible the originator should be consulted. The sensitivity of information will generally diminish over time, and the age of the information is therefore likely to be a key factor in determining whether it can be released.

When information is refused, the applicant must be informed of the right to appeal, initially to MOD, and then to the Information Commissioner.

Standard words to cover this are included in letter templates within the Access to Information Toolkit.

Appeals to MOD will be handled by Information Access (part of DG Info). This process constitutes an independent review of the way the request was handled within the relevant policy area, giving MOD an opportunity to decide whether the original decision was appropriate. In order to conduct the review, the Information Access team will require a copy of all the information relevant to the decision to refuse the request. In the event of any subsequent appeal to the Information Commissioner, he will also need to see this information.

An applicant may appeal because

- the response took longer than 20 working days
- information was withheld
- of the belief that the exemptions have been wrongly applied, or that
- the calculation of costs contravenes the Fees Regulations.

It is important to note that the Information Commissioner will make an annual report to Parliament on the performance of government departments in relation to FOI and EIR. MOD will therefore be liable to criticism if there is any systematic failure to handle requests for information in accordance with the legislation.

11. Exemptions and Exceptions

In order to withhold information it will generally be necessary to be able to cite one of the exemptions (FOI) or exceptions (EIR) in accordance with the legislation. A list of the exemptions and exceptions which relate to distinct classes of information or specific subjects follows. More information about the scope and use of the exemptions and exceptions can be found in the relevant sections of the full "Access to Information Guidance Notes".

The only other circumstances in which it will be possible to refuse a request are as follows:

Under FOI

- If the cost of compliance exceeds the £600 limit set in the Fees Regulations.
- If the request is vexatious or repeated.

Under EIR

If the request:

- is manifestly unreasonable
- is formulated in too general a manner (provided assistance has been given to the applicant with a view to re-framing the request)
- relates to unfinished documents or incomplete data
- would involve disclosure of internal communications.

In contemplating whether reliance can be placed on any of these grounds, it must be remembered that there is a general requirement for public authorities to apply a presumption in favour of disclosure and to weigh up the balance of public interest.



For detailed guidance on the application of specific exemptions and exceptions see the full “Access to Information Guidance Notes”

FOI Absolute Exemptions

- s.21** Information reasonably accessible to the applicant by other means.
- s.23** Information supplied by, or relating to, bodies dealing with security matters.
- s.32** Court records
- s.34** Parliamentary privilege.
- s.36** Prejudice to the effective conduct of public affairs (but only absolute in relation to information held by the Commons or House of Lords).
- s.40** Personal information
- s.41** Information provided in confidence (but only if this would constitute an actionable breach of confidence).
- s.44** Prohibitions on Disclosure.

FOI Qualified Exemptions subject to the Public Interest Test

- s.22** Information intended for future publication.
- s.24** National Security.
- s.26** Defence.
- s.27** International Relations.
- s.28** Relations within the UK.
- s.29** The economy.
- s.30** Investigations and proceedings conducted by public authorities.
- s.31** Law enforcement.
- s.33** Audit functions.
- s.35** Formulation of government policy, etc.
- s.36** Prejudice to effective conduct of public affairs
- s.37** Communications with Her Majesty etc. and honours.
- s.38** Health and safety.
- s.39** Environmental information.
- s.42** Legal professional privilege.
- s.43** Commercial interests.

EIR Exceptions subject to the Public Interest Test

- reg.12 (5) (a) International relations, defence, national security or public safety.
- reg.12 (5) (b) The course of justice, fair trial, conduct of a criminal or disciplinary inquiry.
- reg.12 (5) (c) Intellectual property rights.
- reg.12 (5) (d) Confidentiality of public authority proceedings when covered by law.
- reg.12 (5) (e) Confidentiality of commercial or industrial information, when protected by law to cover legitimate economic interest.
- reg.12 (5) (f) Interests of the person who provided the information.
- reg.12 (5) (g) Protection of the environment.
- reg.13 Personal data.



12. The Response Process – the 8 ‘R’s

Responding to a request involves 8 key steps – the following 8 ‘R’s:

1. Read: Read correspondence and decide whether it constitutes a request, what it relates to and whether or not it needs to be transferred to another policy area. If so, don’t delay!

2. Record: All requests must be logged in the Access to Information Toolkit and all key actions must also be recorded. You will need an accurate and complete audit trail for each request, particularly if an appeal is subsequently received.

3. Retrieve: You need to retrieve and consider all the relevant information.

4. Refer to others: Where necessary, consult with others both within MOD and externally. Remember to seek views on the disclosure of information and the balance of public interest.

5. Redact: As the legislation refers to the release of information rather than documents it may be appropriate to release just some of the information within a document. Any potentially sensitive information not relevant to the request or for which disclosure was not authorised should be blanked out or

“redacted” in the copy sent to the applicant. This will involve going through a document line-by-line.

6. Review: Once the response to a request has been prepared, this will need to be reviewed by someone who has the necessary authority to release or refuse to disclose information. The process for authorising disclosure of information must be specified in local instructions. The use of exemptions to withhold information should be approved at one-star level.

7. Reply: Once the necessary authority has been secured, the reply can be sent to the applicant. Replies must be in writing and templates are provided in the Access to Information Toolkit. Ensure the reply is filed, along with an exact copy of any enclosures.

8. Release to Publication Scheme: Consider whether or not the information provided is likely to be of general public interest. If so, consider whether it should be included in MOD’s Publication Scheme. Consult your FOI Focal Point about how to pursue this.



13. Requests for Information – Key Dos and Don'ts

DOs

- ✓ DO respond quickly – replies must be sent promptly but in any event not later than 20 working days from the date of receipt by MOD. The Information Commissioner is likely to be very critical if we regularly exceed this limit.
- ✓ DO remember that a request for personal data about the applicant is a Subject Access Request and must be answered in accordance with the Data Protection Act '98.
- ✓ DO record receipt of the request in the AIT Toolkit and ensure the progress of the request is tracked to completion.
- ✓ DO inform the applicant as soon as possible if the need to access the balance of public interest means that a substantive reply is likely to take longer than 20 working days. Specify a reasonable date and ensure that it is met.
- ✓ DO give a clear explanation of any exemptions or exceptions claimed for information withheld and the reasons why the balance of public interest is against disclosure.
- ✓ DO maintain an audit trail of information sources consulted, any redactions made and a copy of what is finally sent to the applicant.
- ✓ DO remember that public authorities are under a duty to provide advice and assistance to the applicant.
- ✓ DO contact your FOI Focal Point if you have any questions or concerns regarding FOI or EIR.

- ✓ DO follow the rules – the department will back up your actions provided you have complied with current policy and guidelines.
- ✓ DO consider the readability; use a sensible text font and size, avoid abbreviations or jargon, draft in plain English and remember you cannot assume that applicants will have background knowledge of the subject matter.
- ✓ DO think about the wider implications of disclosing or withholding information. Is there a need to alert Ministers and or brief the press office?

DON'Ts

- ✗ DON'T withhold information without clear justification under one or more of the exemptions or exceptions allowed by the legislation – unjustified withholding will only undermine the reputation of the MOD in the eyes of the public and the Information Commissioner.
- ✗ DON'T wilfully destroy or alter any original documents that are the subject of a request – under the legislation this will be a criminal offence, for the individual official responsible (not the department), carrying a potential fine of up to £5,000!





Your FOI Focal Point is:

A large, empty yellow rectangular box with rounded corners, intended for the user to write the name of their FOI Focal Point.

