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| ONR Procedure  Procedure for Managing Information Requests |



ONR Procedure

Procedure for Managing Information Requests

Authored by: Senior Policy Advisor

Approved by: Director of Policy and Communications

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# Introduction

Freedom of Information (FOI) is one of the pillars upon which open government operates. Since 1 January 2005, all requests for information received by a public authority have had to be answered in accordance with the Freedom of Information Act (FOIA) 2000 or the Environmental Information Regulations (EIR) 2004. The only exception will be an individual’s request for their own personal data which must be handled as a Subject Access Request under the terms of the UK General Data Protection Regulations (UK GDPR).

ONR is committed to being an open and transparent regulator. We will use openness and transparency to achieve our objective of developing and maintaining stakeholder trust in ONR as an effective independent regulator. In doing so we will operate on a basis of openness with a presumption to disclose information concerning our corporate and regulatory activities and judgements providing the following principles are met:

* We will proactively disclose information that we believe, on balance, serves the public interest, does not infringe any statutory restrictions and can be supported by ONR;
* We will communicate the information we disclose in a way that makes it accessible to the general public;
* We will use requests for information as an opportunity to enhance our existing accountability by disclosing more information;
* We will ensure that all staff in ONR know who is responsible for responding to information requests;
* We will practise good records management to ensure information can be quickly identified and retrieved; and,
* We will respond to all requests within 20 working days, unless in complex cases where an extension of time is required under a qualified exemption or exception in order to consider the public interest test.

## Purpose

This procedure is intended to give an overview of the actions required and the factors that need to be taken into consideration when responding to an information request.

The structured process takes you through the information request lifecycle from beginning to end and will help you respond. You should use this guide to support you through the process but be mindful that every request is different and the Policy Team are here to help.

This guide is aligned with the Information Commissioner’s Office (ICO) guidance and the Cabinet Office Code of Practice, promoting best practice in meeting our responsibilities under Part 1 of the FOIA and Part 1 of the EIR.

For more detailed guidance or advice please contact the Policy Team via [Contact@onr.gov.uk](mailto:Contact@onr.gov.uk), select the links embedded within this document, and refer to the reference section or [Nucleus](https://onr.kahootz.com/ONRIntranet/view?objectId=21661872).

## Scope and Applicability

This procedure applies to all information requests received by any member of staff at ONR.

## Definitions

Table – Table of Definitions

|  |  |
| --- | --- |
| Term/Acronym | Description |
| DM | Decision Maker |
| EIR | Environmental Information Regulations 2004 |
| FOI | Freedom of Information |
| FOIA | Freedom of Information Act 2000 |
| ICO | Information Commissioner’s Office |
| Information | ‘Information’ covers all electronic and physical files. It extends to closed files and archived material as well as information in current use. It also applies to information received from others, e.g., licensees, bidders, other agencies or government departments etc. |
| PIT | Public Interest Test |
| TL | Technical Lead |
| UK GDPR | United Kingdom General Data Protection Regulations |

# Managing Information Requests

Any correspondence could include a request for information, and it is important to note that it does not need to mention the FOIA or EIR. If the request contains a name, contact details and a description of the information required, then it will fall within the scope of the legislation. FOI requests must be framed in writing, but EIR requests do not have to be.

As a “rule of thumb”:

* If any information requested is held and needs to be actively considered, then the request should be formally treated as a request for information; and,
* If it seems likely that the requested information cannot be disclosed, it should be formally recorded as a request for information.

The FOIA requires ONR to:

* Adopt and maintain a Publication Scheme, setting out the information which ONR will routinely make available and in what form it will be made available; and,
* Inform, in writing, anyone making a request for information whether it holds the information requested, and if so to communicate that information. ONR is not obligated to comply with a request where it has advised the applicant that it (reasonably) requires further information in order to identify and locate the information requested.

In summary, when dealing with requests for information the main elements to be aware of are:

* Requests for information that are received by you directly from the requester must be sent to [Contact@onr.gov.uk](mailto:Contact@onr.gov.uk) to log and deal with via the appropriate channels immediately. The 20 working day timescale starts the day the request is received by ONR;
* What information is already held on the publication scheme and whether this is up to date;
* How to find the information that is asked for;
* Requests must be responded to promptly and within 20 working days. If you do not feel the request has been allocated to the appropriate person or department, please contact the Policy team – do not hold up the process;
* A refusal to supply the information can only be made where there is an exemption under the FOIA or exception under EIR. Where a refusal is likely, please contact a Policy Advisor;
* If in doubt about what information you can provide, or have any queries on the process, speak to a Policy Advisor;
* We are only expected to provide information we hold at the time of the request. Recorded information can be held in the form of any documents, emails, notes, files, letters, database, loose reports, office notebooks, photographs, wall charts, maps, videos and audio tapes; and,
* You are not required to create information that is not already held at the time of receipt of the request which includes providing information formed on opinions or from memory.

Table – Do’s and Do nots.

|  |  |
| --- | --- |
| Do’s | Do nots |
| Do redirect any requests for information that you may have received directly from a requester to [Contact@onr.gov.uk](mailto:Contact@onr.gov.uk) to log and deal with via the appropriate channels. | Do not delay or hold up the process – the 20-working day timescale starts from the day following the date of receipt into ONR. This means if a request has been sent to you in error, or if there are foreseeable staffing issues or delays are likely, please inform the Policy Team at the earliest opportunity so that the team and requester can be kept informed. |
| Do ask for clarification if a request is unclear or further information is needed. This stops the clock until further information is provided, at which point the clock restarts. | Do not ask for clarification near or on the deadline, this should be done in the first instance as it may appear that ONR is vying for further time. |
| Do ask for advice or assistance from the Policy Team if this is required, particularly if you are unsure of what information can be provided or if an exemption applies. | Do not ask for extensions of time as they are not permitted unless for cases where a Public Interest Test is required or in particularly complex environmental cases. Please note these cases must be justified as set out under the relevant legislation. |
| Do respond to requests quickly and within the timescales provided by the Policy Team. | Do not consider the person or the reason behind a request. We must remain applicant and motive-blind and respond impartially. |
| Do familiarise yourself with what information your division submits to the website/publication scheme and whether this is up to date. | Do not create new information, provide opinions or any information from memory in response to a request. We must only provide information that we hold. This is to ease the burden on ONR. |
| Do advise the Policy Team if a request is going to take over 24 hours to fulfil. This is the maximum amount of time we are permitted to spend on a request. | Do not be late. Consistent failure to comply with deadlines leading to missed/late responses can lead to the ICO taking enforcement action against ONR. |

## Overview of Information Access Regimes

There are many similarities between information requests however there are also many differences. Further information is provided throughout this procedure however the team are here to help; all requests should come through [Contact@onr.gov.uk](mailto:Contact@onr.gov.uk) where the team will make a judgement based on the summary below.

Information requests can come to anyone within ONR so if you receive one, please send on to [Contact@onr.gov.uk](mailto:Contact@onr.gov.uk) immediately to action. We have a statutory responsibility to respond to FOI/EIR requests within 20 working days and the “clock” starts from the following working day of receipt into ONR, therefore it is important we do not delay.

For further information about your responsibilities under the FOIA and the EIR as an employee of ONR, please see the following ICO training [videos](https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-act-foia-and-environmental-information-regulations-eir/).

Figure - Information Access Regimes

Valid request for information

Is the information personal?

Consider under UK GDPR and contact the Data Protection Officer asap dataprotection@onr.gov.uk

Yes

No

Is the information environmental?

Yes

Consider under EIR

No

Contact the Policy Team at Contact@onr.gov.uk

Consider under FOIA

## Information Request Lifecycle

A key aspect for any information request is that it has a start and an end. To give yourself the best chance of successfully completing any request, you should manage your request using this process in Figure 2 which sets out best practice. Appendix A explores the information request lifecycle in more detail, stage by stage.

Please note that the definitive deadline to respond to an information request will be confirmed in the commissioning email sent from the Policy Team and tracked to ensure compliance. The Policy Team will ensure that all stages are completed. Day 1 starts the first working day after receipt of a request.

## Roles and Responsibilities

### Policy Team

The Policy Team is responsible for the following:

* Is accountable for the information request function;
* Provides expert advice on information legislation;
* Confirms Technical Lead and Decision Maker with the Division/Directorate;
* Liaises with Government Legal Advisors;
* Tracks and logs progress ensuring statutory timescales are met;
* Completes redactions of documents;
* Undertakes compliance checks;
* Produces and issues the final response to the requestor;
* Administers ONR’s access to information appeals procedure;
* Develops and maintains ONR’s internal guidance and procedures;
* Produces statistical performance data; and,
* Publishes information releases on ONR’s website.

### Technical Lead (TL)

The TL is responsible for the following:

* Identifies, retrieves and collates any applicable information;
* Liaises with third parties (if required);
* Reviews information and indicates if redactions are required (in conjunction with the Policy Team); and,
* Seeks approval from the Decision Maker (DM) for releasing/withholding information.

### Decision Maker (DM)

The DM is responsible for the following:

* Responsible for release of the information in agreement with the information asset owner;
* Provides arguments for or against disclosure (in conjunction with the Policy Team); and,
* Approves release or withholding of the information.

## Appeals

When information is refused, the requestor must be informed of the right to appeal, initially via ONR’s internal review process and then to the Information Commissioner.

Requestors of information may choose to appeal against the decision made by ONR for various reasons:

* The response took longer than 20 working days;
* Information was withheld and they believe that the exemptions or exceptions have been wrongly applied;
* The calculations of costs contravene the Fees Regulations; and,
* ONR has in any other way mishandled the request.

The Policy Team have oversight of ONR’s internal review process which constitutes an independent review of the way the request was handled and gives an opportunity to decide whether the original decision was appropriate. If ONR upholds the decision to withhold the information, the requestor can appeal to the Information Commissioner. Each response issued by ONR contains details of this.

For more information about ONR’s internal review procedure, please contact the Policy Team.

For more information about what happens if the requestor complains about ONR to the ICO please see [what happens when someone complains?](https://ico.org.uk/for-organisations/guide-to-freedom-of-information/complaints/).

## Time recording

Please remember to record your time spent on FOI on the OTiS system. To do so select:

* Corporate Services > Project/Site – Policy CS09 > Activity – Management – CS06 > Sub-Project – FOI.

Figure – Information Request Lifecycle Summary

Directorate/Division where the information is held to lead - Policy Team to provide advice.

Key: Policy Team

# References

* [Information Commissioner’s Office – Full Index of Guidance](https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/)
* [Freedom of Information Act 2000](http://www.legislation.gov.uk/ukpga/2000/36/contents)
* [The Environmental Information Regulations 2004](https://www.legislation.gov.uk/uksi/2004/3391/contents/made)
* [Freedom of Information Code of Practice](https://www.gov.uk/government/publications/freedom-of-information-code-of-practice)
* [Hints for Practitioners handling FOI/EIR requests](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/16868/foiguidance_may08.pdf)
* [ONR Information Releases Archive](http://www.onr.org.uk/foi/archive.htm)
* Blackstone’s Guide to the Freedom of Information Act 2000. By John Wadham, Jonathan Griffiths and Bethan Rigby. Oxford University Press; 5th Edition.
* Law Society Freedom of Information Handbook, Edited by: Peter Carey and Robin Hopkins. Law Society Publishing; 3rd Edition.

# Appendix A – Information Request Considerations and Actions

Each stage of the information request lifecycle has distinct activities which should be completed before moving to the next. The Policy Team lead on completing each task (in collaboration with the Technical Lead and Decision Maker where required).

|  |  |
| --- | --- |
| Is the request valid? | |
| * Anyone can make a request – requests for information do not need to mention the FOIA/EIR however they should describe the information of interest; * Is it a request for environmental information? Consider whether the request for information should be dealt with under EIR as opposed to the FOIA; * Is it a request for [personal information](https://ico.org.uk/for-organisations/guide-to-freedom-of-information/refusing-a-request/)? Consider whether the request for information should be dealt with under the [UK GDPR](https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/); * For an FOI to be valid, the request must be in writing (email, letter or fax) and must include the requestor’s name and email/postal address to which a response can be sent; and, * EIRs can be received over the phone however it is best practice to confirm in writing as per FOI. A verbal request log sheet for EIR is available [here](https://ico.org.uk/media/for-organisations/documents/1617/verbal_request_for_environmental_information_log_sheet.pdf). | |
| **Statutory Time Limits to Respond** | |
| * There is a requirement to provide a substantive response to any request for information promptly and in any event within 20 working days; * For FOI, if an exemption is being considered for withholding the information, there is scope to extend this by up to 20 working days to consider the public interest test; * For EIR, there is a provision to extend the response time to 40 working days, but only for complex and voluminous requests; * However, in any case, you must respond within 20 working days explaining why the extension is required and stating an estimated date of response; and, * Falling short of deadlines leaves ONR open to challenge by the ICO. Should we consistently fail to meet the 20 working day deadline, the ICO can take regulatory action. | |
| **Is the information already available via the ONR Publication Scheme?** | |
| * Under s.19 of the FOIA, ONR must adopt and maintain a publication scheme; * The [ONR Publication Scheme](http://www.onr.org.uk/foi/publication-scheme.htm)describes the categories of information we publish as a matter of course, and explains how to access that information; and, * The more information we publish, the easier it will be for the Policy Team to signpost requesters to our website in the first instance and limit the amount of input required from around the organisation. Should you require advice or assistance on publishing, please let the Policy Team know. | |
| **Is the information held by ONR?** | |
| * A person can request any information held by ONR; * All recorded information held by, or on behalf of ONR is within scope of the Act or Regulations (although both recognise that the disclosure of personal data is subject to the UK GDPR). This means that both paper and electronic files would be subject to a request, including but not limited to documents held within MS Outlook, MS Teams, WIReD, CM9 or even in our off-site archive facility; * The legislation applies regardless of age, format, origin or classification of the information; * Recorded information can be held in the form of any documents, emails, notes, files, letters, database, loose reports, office notebooks, photographs, wall charts, maps, videos and audio tapes; * If the requestor 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; * We are required to inform the requestor if we hold the information specified in the request. However, if doing so would itself disclose sensitive or potentially damaging information, you may consider using a ‘neither confirm nor deny’ response; * If we do not hold the information that has been requested, but you believe another public authority holds it, you should contact the requestor and supply the contact details of the relevant public authority, having confirmed beforehand that we do not hold the information; and, * The statutory duty to release information, even if it was originally provided by a third party or held by another on behalf of ONR, lies with ONR. We follow the [FOI Code of Practice](https://www.gov.uk/government/publications/freedom-of-information-code-of-practice) by consulting with third parties as soon as a request has been received. This allows the third party time to consider if any exemptions apply prior to releasing the information. We aim to notify all third parties of interest within 5 working days. | |
| **The differences between EIR and FOI** | |
| * The EIRs only cover environmental information. FOIA covers all information held by public authorities except environmental; * EIRs relate to any issues surrounding the environment such as soil and land, air and atmosphere, waste management, animals and people, pollution, health and safety and also includes reports, measures and analysis of environmental information. There is an expectation for ONR to release environmental information as it will often directly affect citizens and therefore there is an inherent public interest in releasing environmental information; * EIRs do not have a “cost limit”, equivalent to 24 hours for FOI. Therefore, we can allow an extension of no more than a further 20 working days if the request is both complex and voluminous. FOI allows public authorities further time to consider the public interest; * EIR requests can be in any format. FOI requests must be in writing; * EIR allows authorities to make a charge for information providing it is reasonable. FOI has a charge limit below which information is provided free of charge. It is important to note that ONR does not charge for FOI/EIR. If the cost limit is exceeded the relevant exemption is applied; and, * EIRs have a different, and narrower, range of exceptions than the exemptions in the FOI Act. There is however a particular exception for information whose disclosure could adversely affect the environment. | |
| **Will the cost of locating, retrieving, and extracting the information exceed the appropriate limit?** | |
| * The appropriate limit for ONR is £600, which represents the estimated cost of one or more person(s) collectively spending 24 hours (~3.5 days) in determining whether ONR holds the information, and locating, retrieving and extracting the information; * The staff time taken, or likely to be taken, for redaction cannot be included; * You cannot include the time taken to consider whether an exemption applies, or in determining the [Public Interest Test](https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/the-public-interest-test/); * For more information see: [s.12](https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf) - Requests where the cost of compliance exceeds the appropriate limit; and, * Requests received within 60 consecutive working days from the same person can be aggregated (further information on repeat requests/aggregation can be found below). | |
| **Is there a duty to provide advice and assistance?** | |
| If the request is too widely framed (or will take us beyond the appropriate limit) you should consider whether:   * It would be helpful to consult with the requestor to try to narrow or refine the request, where the cost limit is likely to be exceeded in answering the request; and, * How long will it take to retrieve and extract the information requested? | |
| **Records retention/management** | |
| * The Information Management Policy sets out the way in which our document retention activities are to be carried out and contains the standards which should be followed; * Records should be retained and disposed of in accordance with the appropriate Retention Schedules or departmental local agreements; * It is an offence to modify or destroy records with the intention of preventing disclosure to an information request; * When a request has been received for information that is scheduled to be destroyed, you should preserve any information you identify as falling within the scope of the request to prevent its deletion or amendment; * Further information on ONR’s record management policies can be found here: [Resources and guidance](https://onr.kahootz.com/ONRIntranet/view?objectId=954387); and, * Further information on the retention and destruction of information in line with the FOIA can be found here: [Retention and destruction of information | ICO](https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/retention-and-destruction-of-information/#:~:text=If%20we%20are%20due,committing%20a%20criminal%20offence.). | |
| **Is it a vexatious request?** | |
| There is no need to comply with the request if:   * 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, annoyance or has the effect of harassing ONR; and, * It can otherwise fairly be characterised as obsessive or manifestly unreasonable.   Guidance on dealing with vexatious requests ([s.14](https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/dealing-with-vexatious-requests-section-14/)). | |
| **Is it a repeated request?** | |
| There is no need to comply with the request if 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 has elapsed between them (60 working days). | |
| **Can the request be aggregated?** | |
| If we are estimating whether the appropriate limit is likely to be exceeded, we can include:   * The costs of complying with two or more requests made by one person; * The costs of complying with two or more requests made by different persons who are acting in concert or in pursuance of a campaign; or, * Requests made for the same or similar information made within any period of 60 consecutive working days.   The requests must have been made under one scheme instead of a mixture of requests under the FOIA and EIRs to meet the aggregation criteria, i.e. two requests made under the FOIA would be acceptable, but one request under FOIA and one under the EIRs would not. | |
| **Consultation with Third Parties** | |
| * There will be circumstances when we should consult third parties about information held in scope of a request in order to consider whether it is suitable for disclosure; * We are not required to accept the views provided by third parties as it is up to us to take the final decision on release following any consultation undertaken; * If a decision is made to release the information, it is best practice to give the third party advance notice as soon as possible; and, * The onus of contacting the Third Party lies with the TL and DM, however the Policy Team is on hand to assist if needs be. | |
| **Right of access to information** | |
| Both the FOIA and EIR provide a right of access to information. 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. | |
| **If we do hold the information, should it be released?** | |
| This depends on whether an exemption (FOI) or exception (EIR) applies. They exist to protect information that should not be disclosed, for example because it would be harmful (prejudice) or it would be against the public interest.  To decide whether disclosure (or confirmation/denial) would be harmful:   * you must be able to identify a negative consequence of the disclosure (or confirmation/denial), and this negative consequence must be significant (more than trivial); * you must be able to show a link between the disclosure (or confirmation/denial) and the negative consequences, showing how one would cause the other; and, * there must be at least a real possibility of the negative consequences happening, even if you cannot say it is more likely than not.   There are 23 exemptions under the FOIA and 13 exceptions under EIR. If an absolute exemption applies there are no obligations under the Act to consider the request for information further. If a qualified exemption applies, these 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 by up to a maximum of 20 working days to consider fully where the balance of public interest lies. | |
| **Types of information to be considered for non-disclosure** | |
| There should be a presumption of openness and releasing information as requested unless there are cogent and defensible reasons against it. In the day to day operations of ONR, we collect information that may be commercially sensitive, personal data, defence related, health and safety, information provided in confidence or about the effective working of ONR.  Further scrutiny regarding release should be considered before deciding on disclosure. Sensitive information in relation to nuclear material, other radioactive material and facilities housing such material should be considered on a case by case basis.  Particular attention should be paid to information relating to:   * Nuclear material (accounting, inventory, security, quantity, form or transport); * IT and computer systems important to security and safety; and, * Safety cases, contingency and emergency plans and exercises, threat Assessments and security alerting information. | |
| **FOI Exemptions** | |
| **Absolute Exemptions**  There is no obligation under the FOIA to consider the request for information further if an absolute exemption applies. Absolute exemptions include:   * [S.21](https://ico.org.uk/media/for-organisations/documents/1203/information-reasonably-accessible-to-the-applicant-by-other-means-sec21.pdf) – Information reasonably accessible to the applicant by other means * [S.23](https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/section-23-security-bodies/#:~:text=Section%2023%281%29%20provides%20an%20exemption%20for%20information%20if,the%20Secret%20Intelligence%20Service%20and%20other%20similar%20bodies.) – Security bodies * [S.32](https://ico.org.uk/media/for-organisations/documents/2014222/section-32-court-inquiry-arbitration-records.pdf) – Court, inquiry or arbitration records * [S.34](https://ico.org.uk/media/for-organisations/documents/1161/section_34_parliamentary_privilege.pdf) – Parliamentary privilege * [S.40](https://ico.org.uk/media/for-organisations/documents/1209/personal-data-of-both-the-requester-and-others-foi-eir.pdf) – Personal information * [S.41](https://ico.org.uk/media/for-organisations/documents/1432163/information-provided-in-confidence-section-41.pdf) – Information provided in confidence * [S.44](https://ico.org.uk/media/for-organisations/documents/1186/section-44-prohibitions-on-disclosure.pdf) – Prohibitions on disclosure | **Qualified Exemptions**  If the exemption is qualified, you must weigh the public interest in maintaining the exemption against the public interest in disclosure. This is the [Public Interest Test](https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/the-public-interest-test/).  You can only withhold the information if the public interest in maintaining the exemption outweighs the public interest in disclosure. Qualified exemptions include:   * [S.22 and S.22A](https://ico.org.uk/media/for-organisations/documents/1172/information-intended-for-future-publication-and-research-information-sections-22-and-22a-foi.pdf) – Information intended for future publication and research * [S.24](https://ico.org.uk/media/for-organisations/documents/1174/safeguarding_national_security_section_24_foi.pdf) – Safeguarding national security * [S.26](https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/section-26-defence/) – Defence * [S.27](https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/section-27-international-relations/) – International relations * [S.28](https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/section-28-relations-within-the-uk/) – Relations within the UK * [S.29](https://ico.org.uk/media/for-organisations/documents/1177/theeconomy.pdf) – The economy * [S.30](https://ico.org.uk/media/for-organisations/documents/1205/investigations-and-proceedings-foi-section-30.pdf) – Investigations and proceedings * [S.31](https://ico.org.uk/media/for-organisations/documents/1207/law-enforcement-foi-section-31.pdf) – Law enforcement * [S.33](https://ico.org.uk/media/for-organisations/documents/1210/public-audit-functions-s33-foi-guidance.pdf) – Public audit functions * [S.35](https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/section-35-government-policy/) – Government policy * [S.36](https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/section-36-prejudice-to-the-effective-conduct-of-public-affairs/) – Prejudice to the effective conduct of public affairs * [S.37](https://ico.org.uk/media/for-organisations/documents/1194/communications_with_her_majesty_and_the_awarding_of_honours.pdf) – Communications with His Majesty and the awarding of honours * [S.38](https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/section-38-health-and-safety/) – Health and safety * [S.39](https://ico.org.uk/media/for-organisations/documents/1043419/exemption-for-environmental-information-section-39.pdf) – Environmental information * [S.42](https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/guide-to-freedom-of-information/refusing-a-request/) – Legal professional privilege * [S.43](https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/section-43-commercial-interests/) – Commercial Interests |
| **Prejudice-based exemptions**  Some FOIA qualified exemptions are prejudice-based. That means in order to engage them there must be a likelihood that disclosure would cause prejudice to the interest that the exemption protects.  Once the exemption has been engaged on the basis of the prejudice test, it is then necessary to consider the balance of public interest.  **Further guidance can be found here:**   * [The Prejudice Test](https://cy.ico.org.uk/media/for-organisations/documents/1214/the_prejudice_test.pdf) * [The Public Interest Test](https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/the-public-interest-test/) |
| **EIR Exceptions** | |
| For environmental information we hold where there will be a good reason for not making public some or all of it. The EIR state exceptions that allow you to refuse to provide requested information. EIR Exceptions subject to the [Public Interest Test](https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/the-public-interest-test/) include:   * [Reg. 12 (4) (a)](https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/guide-to-the-environmental-information-regulations/refusing-a-request/#:~:text=Regulation%2012(4)(a)&text=Information%20is%20%27held%27%20if%2C,holds%20it%20on%20your%20behalf.) – The information is not held * [Reg. 12 (4) (b)](https://ico.org.uk/media/for-organisations/documents/1615/manifestly-unreasonable-requests.pdf) – Manifestly unreasonable requests * [Reg. 12 (4) (c)](https://ico.org.uk/media/for-organisations/documents/1619/requests_formulated_in_too_general_a_manner_eir_guidance.pdf) – Requests formulated in too general a manner * [Reg. 12 (4) (d)](https://ico.org.uk/media/for-organisations/documents/1637/eir_material_in_the_course_of_completion.pdf) – Material in the course of completion, unfinished documents and incomplete data * [Reg. 12 (4) (e)](https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/regulation-12-4-e-internal-communications/what-are-internal-communications/#:~:text=Regulation%2012(4)(e,by%20the%20public%20interest%20test.) – Internal Communications * [Reg. 12 (5) (a)](https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/regulation-12-5-a-international-relations-defence-national-security-or-public-safety/#:~:text=Regulation%2012%20%285%29%20%28a%29%20states%20that%20a%20public,international%20relations%2C%20defence%2C%20national%20security%20or%20public%20safety.) – International relations, defence, national security or public safety * [Reg. 12 (5) (b)](https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/regulation-12-5-b-the-course-of-justice-and-inquiries-exception/#:~:text=Regulation%2012%20%285%29%20%28b%29%20allows%20you%20to%20refuse,an%20inquiry%20of%20a%20criminal%20or%20disciplinary%20nature.) – The course of justice and inquiries exception * [Reg. 12 (5) (c)](https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/commercial-or-industrial-information-regulation-12-5-e/) – Intellectual property rights * [Reg. 12 (5) (d)](https://ico.org.uk/media/for-organisations/documents/1626/eir_confidentiality_of_proceedings.pdf) – Confidentiality of proceedings * [Reg. 12 (5) (e)](https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/commercial-or-industrial-information-regulation-12-5-e/) – Confidentiality of commercial or industrial information * [Reg. 12 (5) (f)](https://ico.org.uk/media/for-organisations/documents/1638/eir_voluntary_supply_of_information_regulation.pdf) – Interests of the person who provided the information to the public authority * [Reg. 12 (5) (g)](https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/regulation-12-5-g-protection-of-the-environment/#:~:text=Regulation%2012%20of%20the%20EIR%20states%3A%20%285%29%20a,most%20EIR%20exceptions%2C%20this%20is%20a%20qualified%20exception.) – Protection of the environment * [Reg. 13](https://ico.org.uk/media/for-organisations/documents/1213/personal-information-section-40-and-regulation-13-foia-and-eir-guidance.pdf) – Personal information | |
| **The Public Interest Test** | |
| * If it is a qualified exemption (or exception), have you considered [The Public Interest Test](https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/the-public-interest-test/) (PIT) i.e. would release of the information cause harm (prejudice)? And, even if it would, does the public interest still favour disclosure? * The burden is on ONR 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 occur by releasing this information; and, * It is important to note that if the balance falls 50:50, then information should be released.   **The balancing exercise**  **When preparing the PIT, it is important to note:**   * All the circumstances that have been considered; * The specific public interests in favour of withholding information in the particular case, and weight given to each; * The specific public interests in favour of disclosure of information in the particular case, and the weight given to each; * The considerations given to timescales; and, * The considerations given to partial disclosure (e.g. by redacting information which qualifies for exemption but disclosing everything else).   **Factors in favour of disclosure**   * To promote public understanding and provide a full picture; * To promote transparency and accountability and safeguard democratic processes; * To ensure good decision making by public authorities, including to ensure standards of integrity are upheld and that there is justice and fair treatment for all. This is because it will improve the quality of decisions and administration if authorities and officials have to provide reasoned explanations for their actions; * To ensure the best use of resources and fair competition in a mixed economy. For example, where public services are outsourced to the private sector there is a public interest in genuine competition and value for money – disclosure of information about gifts and expenses will also reassure the public of elected officials; and, * To remove plausible suspicion of wrongdoing.   **Factors which are irrelevant**   * A risk of information being misunderstood, either because it is technical or incomplete; * A risk of embarrassment; * The ‘class/type’ of information is not of itself normally an argument against disclosure; * The suggestion that poor record keeping would be likely to result from disclosure is given little or no weight if argued as a factor against disclosure; * Interests which are private in nature; and, * The identity or motives of the requestor. | |
| **Redactions** | |
| * There is a need for care when information has to be redacted. Be aware that poor redactions can be reversed or remain legible; * Only use approved software. For Microsoft products delete the text to be redacted and replace with [Redacted]. For other software products use Adobe Acrobat Pro; * Keep a log of all redactions made against each exemption/exception; and, * See the following guidance for further information - [How to disclose information safely](https://ico.org.uk/media/for-organisations/documents/2021/2619016/how-to-disclose-information-safely-20201224.pdf). | |
| **Writing a refusal notice** | |
| A refusal notice should:   * Make clear the information regime the request has been considered under; * State that ONR is exempt from the duty to confirm or deny or is exempt from the duty to supply the requested information; * Specify any exemptions/exceptions being relied upon; * State why they apply; * Where a qualified exemption/exception is relied upon, explain the factors considered when weighing up the competing public interests in disclosure/non-disclosure and the reasons for ONR’s conclusion on the public interest test; * Contain details of ONR’s internal complaints procedure; * Contain details of the procedure to make a complaint to the ICO; and, * The full requirements are set out in [s.17](https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/refusing-a-request-writing-a-refusal-notice-section-17/) - Refusing a request; writing a refusal notice. | |

# Appendix B – Information Request Checklist

Table - Information Request Checklist

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Reference Number: | | | | | | |
| **Date or receipt:** | **Internal deadline:** | | | **External deadline:** | | |
| **Policy Team Contact:** | **Technical Lead:** | | | **Decision Maker:** | | |
| **Information Requested:** | | | | | | |
| * Is the request valid? | | | | | Yes | No |
| * Which information access regime? | | | UK GDPR | | FOIA | EIR |
| * Is the information held by ONR? | | | | | Yes | No |
| * Is the information already available? | | | | | Yes | No |
| * Will the cost of locating, retrieving, and extracting exceed the limit? | | | | | Yes | No |
| * Is there a duty to provide advice and assistance? | | | | | Yes | No |
| * Is this the first request from the applicant? | | | | | Yes | No |
| * Is it a vexatious request? | | | | | Yes | No |
| * Is it a repeated request? | | | | | Yes | No |
| * If we do hold the information, should it be released? | | | | | Yes | No |
| * Are redactions required? | | | | | Yes | No |
| * Has a record log been completed for redactions? | | | N/A | | Yes | No |
| * Have exemptions or exceptions been applied? | | | N/A | | Yes | No |
| * List exemptions/exceptions applied | | |  | | | |
| * Has the PIT been completed? | | | N/A | | Yes | No |
| * Is an extension of time required to consider the PIT? | | | N/A | | Yes | No |
| * Is the response late? | | | | | Yes | No |
| * If we do disclose this information, do we need to consult? | | Third parties | | | Yes | No |
| Legal advisors | | | Yes | No |
| Comms Business Partner | | | Yes | No |
| Policy Business Partner | | | Yes | No |
| Director of P&C / SLT | | | Yes | No |
| OET | | | Yes | No |
| Comments: | | | | | | |
| * Decision Maker approved | | | | | Yes | No |
| * Senior Policy Advisor approved (Enquiries team lead) | | | | | Yes | No |
| * Director of P&C (or delegated authority) approved if required | | | | | Yes | No |
| * Once response issued – publish via ONR’s website | | | | | | |

# Appendix C – Policy Team Information Request Flowchart

**START HERE**

**Advise the requester how to make a request.**

**N**

**Is it a valid request for information?**

**Normal course of business**

**General Enquiry**

**UK General Data Protection Regulations (UK GDPR)**

**Transfer to DPO**

**N**

**Y**

**Has the requestor been advised we will not respond?**

**N**

**Issue a refusal notice.**

**Y**

**No obligation to respond.**

**Obtain clarification from the requestor.**

**N**

**Y**

**Can you identify what information is being requested?**

**N**

**Should it be refused as vexatious or repeated?**

**Y**

**Should it be dealt with as an FOI/EIR request?**

**Y**

**Go to next page.**

**Do you hold the requested information?**

**Are you claiming an exclusion from the duty to confirm or deny that the information is held?**

**N**

**Do you hold the requested information?**

**N**

**Go to refusing a request.**

**Do you estimate that it would exceed the costs limit to establish if the information is held?**

**Go to next page.**

**Do you estimate that responding to the request would exceed the appropriate limit?**

**Establish whether or not the requested information is held.**

**Y**

**N**

**N**

**Issue refusal notice citing s.12(2)**

**Y**

**N**

**Tell requestor information not held and transfer request or provide contact details of authority.**

**N**

**Go to refusing a request.**

**Y**

**Y**

**Are you claiming an exclusion from the duty to confirm or deny that the information is held?**

**Do you know what type of information would be held?**

**Not sure**

**Y**

**Tell requestor information is not held.**

**Y**

**Do you know if another public authority holds the information?**

**Go to refusing a request.**

**Y**

**Y**

**If you need more time to consider the public interest, tell the requester which exemption applies and when they can expect a response.**

**N**

**Does the public interest test favour maintain the exemption?**

**Y**

**Go to refusing a request.**

**N**

**Is a public interest test needed?**

**Y**

**N**

**Is an exemption engaged?**

**Y**

**Do you wish to withhold any of the information?**

**Go to releasing information.**

**N**

**Locate and identify the information which falls within the scope of the request.**

**N**

**Tell requestor the information is exempt under s.12 and advise them on how to refine their request or explain why the request cannot be refined.**

**Y**

**Do you estimate that responding would exceed the cost limit?**

**N**

**Y**

**N**

**Does the public interest test favour refusing to confirm or deny that the exempt information is held?**

**N**

**Y**

**Is all the information exempt?**

**Y**

**Issue a refusal notice explaining why you are neither confirming nor denying that the information is held. Inform the requestor about their right to an internal review and how to complain to the ICO.**

**Is the exemption subject to the public interest test?**

**Are you claiming an exclusion from the duty to confirm or deny that the exempt information is held?**

**N**

**Y**

**REFUSING A REQUEST FOR INFORMATION**

**Redact documents or collate the non-exempt information into a separate document. Disclose non-exempt information.**

**Issue a refusal notice and specifying on which exemptions you are relying. Explain why the exemptions apply and why the public interest favours non-disclosure (if relevant). Inform the requestor about their right to an internal review and how to complain to the ICO.**

**DISCLOSE INFORMATION**

**Y**

**Explain to the requestor why it is not reasonably practicable to provide the information in the format requested.**

**N**

**Is it reasonably practicable to comply with the request?**

**N**

**Y**

**Has the requester asked for the information to be provided in a specific format?**

**Extract the information requested.**

**RELEASING INFORMATION**