

Ministry of Defence Access to Information Guidance Note

Version 6

June 2009

Guidance Note D4: Requests with wider implications

(Ministers, Press Office, Foreign Embassies and MOJ Clearing House)

Ministers

1. It is very important to consider the possibility that releasing information in response to a request could have Whitehall-wide implications, or that the release, or withholding, of certain information is likely to generate wider public or press interest. 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 disclosure or withholding of information may draw criticism or cause embarrassment to the MOD. There is a convention that ministerial papers concerning advice to an administration should not be available to a later one. This is a Ministry of Justice (MOJ) Clearing House trigger.

Press Office

2. If there could possibly be any media interest in the information to be disclosed, or withheld, you should contact the relevant press office **several days before** the information is released if possible. The press officers will advise whether they need additional briefing material to answer potential media enquiries on the issue. If there is likely to be media interest in the information to be disclosed, you should also arrange for it to be published on the MOD website (*see Guidance Note C1: MOD Publication Scheme*)

2.1 To determine whether the information in question is likely to have interest to the media, consider:

- Is the request being made by a journalist or media outlet?
- Is the request being made by a politician, a lobby or interest group?
- Is the information likely to be embarrassing to the Armed Forces, individual Service personnel, the MOD, individual MOD employees, Ministers?
- Does the information relate to live issues, or is it only of historic interest?
- Is this the first time the information has been in the public domain?

2.2 It is best to err on the side of caution, and if you are not certain ask the advice of relevant press officers. Annex A has Press Office contact details.

2.3 There will be occasions when non-press office staff need to communicate with journalists or suspected journalists. If this is the case please use the following guidance:

- If you are dealing with an FOI request from a known journalist or someone you think may be a journalist, tell the Press Office and refer to [DIN 2008DIN03-020](#)
- If you are contemplating a telephone call to clarify an FOI request, plan what you want to say carefully. If the applicant is a known journalist, or you think that it may be a journalist, consult the Press Office beforehand. In exceptional circumstances, they may make the call.
- As you consider the level at which release of material in response to an FOI request should be authorised, think also about who should sign off the reply. Taking into account the Department's duty of care to staff, if in doubt (e. g. if the material is contentious or the applicant is a journalist) get a senior figure to sign.
- If a requester contacts you after you have sent a reply, stick to the substance of the previous reply. If they request further information, either invite them to enter a new FOI request in writing (you should confirm their oral request to them in writing if it falls under the EIR) or, if the substance of the request is unchanged but they are dissatisfied with our previous answer,

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remind them of the appeals procedure. Do not be drawn into passing new information at this stage.

- If you have a telephone conversation about Departmental business, especially with an FOI requester, make a file note straight away. If the requester is a known journalist, or you think that they may be a journalist, copy the note to the Press Office. If such a caller wants to move the conversation beyond the appropriate grounds (clarifying a request or a response) invite them to call the Press Office.

Requests from Foreign Embassy Staff

3. Please can you make sure that if you are handling an FOI request from Foreign Embassy Staff please contact the Foreign Liaison Section within D Def Diplomacy on xxxxxxx.

Ministry of Justice Clearing House

4. The Ministry of Justice (MOJ) has a central Clearing House to offer advice and assistance to Whitehall Departments in dealing with information requests which are round robins, are particularly difficult or have cross Government implications, and to ensure a consistent and appropriate approach is taken.

4.1 Appendix 1 sets out guidance on the Central Clearing House Policy and Process. It contains a generic list of triggers for cases that should be referred to Info Access for possible Clearing House action. Focal Points should use their discretion regarding whether or not cases should be referred to CIO CI Access for possible referral to the Clearing House. Not all cases that fit the triggers should be referred. The guiding principle should be that value will be added by making a referral (not just to this Department but, for example, to ensure that consistent approaches are taking to responses to similar requests across other Government Departments). CIO CI Access staff will also monitor the Access to Information Toolkit (AIT) for potential Clearing House cases.

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ANNEX A

DEFENCE PRESS OFFICE

DUTY PRESS OFFICER: xxxxxxxxxxxx **EMAIL:** xxxxxxxxxxxxxxxxxxxxxxxx & xxxxxxxxxxxxxxxxxxxxxxxx
Please note that this is an emergency line only and should not be called between 00:00-0700 except for emergency or operational purposes

Level 1, Zone N Main Building, Whitehall, LONDON, SW1A 2HB

Switchboard: 020 7218 9000

WEB SITES:
www.mod.uk
www.news.mod.uk

SUPPORT DESK

Office Manager & Manager of Support staff	xxxxxxxxxxxxxx
Admin support, Assistant Office Manager	xxxxxxxxxxxxxx
Admin support	xxxxxxxxxxxxxx

ANNEX B

FREEDOM OF INFORMATION 2000 AND ENVIRONMENTAL INFORMATION REGULATIONS 2004

CENTRAL CLEARING HOUSE POLICY AND PROCESS

Introduction

1. The Government has established a central Clearing House, located within the Ministry of Justice (MOJ), to promote consistency across central Government in relation to the application of the Data Protection Act, the Freedom of Information Act 2000 (FOI) and the Environmental Information Regulations 2004(EIR).
2. The Clearing House aims to offer advice and assistance to Whitehall Departments in dealing with information requests which are particularly difficult or have cross Government implications, and to ensure a consistent and appropriate approach is taken.
3. This document is intended to provide advice to MOD staff about how the Clearing House is intended to work, its relationship to the MOD and the process for referring relevant FOI and EIR initial requests in the Department. It is possible that requests may be referred to the Clearing House at appeal stages (for example, where information about consistency that may not have been known at the initial request stage becomes apparent), in which case, CIO CI Access will automatically be involved. The process in this document applies to the initial request stage of a request for information. References to FOI throughout the remainder of the document also apply to EIR.

Clearing House Functions and Roles

4. The principal functions of the Clearing House are:
 - To ensure a consistent Government-wide position on round robin and potentially precedent-setting cases
 - To provide guidance on all sensitive cases with a potentially high public profile
 - To ensure the response to such cases is in accordance with Government policy and guidance
 - To revise government guidance in the light of emerging case law and new policy imperatives
5. The Clearing House will work in tandem with the Cabinet Office, who will take the lead on those cases intrinsic to the operation of collective responsibility, Cabinet and the role of Ministers. All such cases have to be referred to the Clearing House in the first instance.
6. **All MOD cases requiring review by the National Security Liaison Group (NSLG) must be referred to the MOJ Clearing House and highlighted to Info Access**
xx who can provide further advice regarding the referral process and the use of sections 23, 24 and NCND. **For further information please refer to Appendix 3.**

CIO CI Access Ops Function and Role In Relation to Clearing House Cases

7. CIO CI Access DD is to act as the MOD's Information Rights Officer and the CIO-CI Access Ops team will act as the conduit for all traffic with the Clearing House. Information Rights Officers' are responsible for the early identification of all requests that may be potentially referable to the Clearing House. All MOD agencies, Trading Funds and MOD sponsored Non Departmental Public Bodies are to refer potential Clearing House cases to CIO CI Access.

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Handling of Cases Involving Protectively Marked Information

8. It is possible that some requests for information will involve highly classified material. Suitably cleared staff in Info Access will be available to review sensitive material when required.

10. In all sensitive cases, CIO CI Access will liaise with relevant policy branches etc and/or originators to assess the most appropriate method of handling cases involving sensitive information. This may involve CIO CI Access staff and, if necessary, others viewing information in location. All referrals to the NSLG must be made through CIO CI Access

Process for Referring Cases to The Clearing House

11. The process for referring cases to the Clearing House is attached at Annex C.

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Annex C

Central Clearing House Process

The process for referring requests for consideration by the central Clearing House is as follows:

Identification of Potential Clearing House Cases

- a. The list at Appendix 1 shows a generic list of triggers for cases that should be referred to Info Access for possible Clearing House action. All focal points should be mindful of such triggers when handling any FOI cases. Some triggers would encompass cases that are entirely MOD business only. It is anticipated that not all cases that fit the attached triggers should be referred to CIO CI Access. The guiding principle should be that value will be added by making a referral (not just to this Department but, for example, to ensure that consistent approaches are taken to responses to similar requests across other Government Departments).
- b. Info Access staff will also monitor the AIT for potential Clearing House cases.

Referral of Potential Clearing House Cases

- c. FOI focal points must inform CIO CI Access as soon as possible, that there is a potential case for the Clearing House. Focal points should make an initial assessment about possible referrals and, if in doubt, refer them. The following specific contacts should be used if possible:

Telephone: Military: xxxxxxx or xxxxxxxx
 Civilian: xxxxxxxxxxxxx or xxxxxxxxxxxxx
e-mail: Internal: CIO-CI-Access Ops or CIO-CI-Access Ops1

- d. If a potential case involves information that is classified CONFIDENTIAL or above or Codeword etc, an UNCLASSIFIED or RESTRICTED message should be sent/left in the first instance. If applicable to the Clearing House, the most appropriate means of conveying or viewing the information will be determined at this stage.
- e. CIO CI Access will contact the FOI focal point or the branch concerned to discuss the case briefly to assess whether or not referral to the Clearing House may be necessary. Info Access will seek advice from the Clearing House as necessary. When it is concluded that cases should be handled internally in the Department they will be referred back to the branch concerned (CIO CI Access would not normally become further involved unless the applicant asks for an MOD internal review).

If it is initially decided that cases may be appropriate for the Clearing House

- f. Within one working day after the contact at sub-paragraph e above, FOI focal points or the branch concerned should refer the case to Info Access using the form at Appendix 2. It will not be possible, in all but the most simple (but referable) cases to fully complete the form, for example, exemptions and public interest test considerations, however, as much information as possible should be given within the above timescale. Completed or partially completed forms will give Info Access an overview which is the minimum amount of information required to finally assess whether Clearing House intervention is required. The form is also the standard cross-Whitehall form that all Departments are required to use for Clearing House referrals. Wherever possible, the form should be kept UNCLASSIFIED or RESTRICTED. Forms should be sent as follows:

- (1) By hand to:
CIO-CI-Access

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Level 6, Zone F, Workspace 1

(for the immediate attention of CIO-CI-Access Ops staff)

or,

(2) By e-mail to:

UNCLASS or RESTRICTED only

Internal: CIO CI Access Ops or CIO CI Access Ops1

CONFIDENTIAL or SECRET

To be agreed with CIO-CI-Access staff

(3) By fax to:

UNCLASS or RESTRICTED (where permitted)

Military: xxxxxxxx Civilian: xxxxxxxxxxxxxx

(for the immediate attention of CIO-CI-Access Ops staff)

Again, cases that should be handled internally in the Department will be referred back to the branch concerned.

If it is finally decided that cases should be referred to the Clearing House

g. Within three working days after the contact at sub-paragraph e above, FOI focal points or the branch concerned should send copies of all the relevant papers related to the case to CIO CI Access. This should include the actual information under consideration where possible. It may not be possible, in this timescale, to provide all of the information required, in particular, assessments of exemptions that may apply and, if appropriate, public interest test considerations. FOI focal points or the branch concerned should send as much information as they can in 3 working days and follow-up with supplementary information as soon as possible. CIO CI Access will collate the necessary documentation and, if necessary, send it to the Clearing House at Selborne House, Victoria Street, LONDON.

h. The handling of highly classified or otherwise sensitive material will be agreed with the branch concerned. It may be necessary to promulgate a case meeting in situ with Clearing House representatives. Thereafter cases may have to be referred to the NSLG via CIO CI Access.

i. CIO CI Access will monitor all cases referred to the Clearing House, although FOI focal points should annotate the AIT that the case has been referred and will be responsible for informing the applicant of progress of the case in the normal way.

j. The Clearing House may return cases to the MOD if they decide that the case does not require their involvement. CIO CI Access will accordingly return the case to the branch concerned.

Clearing House Involvement

k. It may be desirable for the Clearing House to contact the specific branch concerned to discuss a case – CIO CI Access must be informed of the progress of the case.

l. The Clearing House may decide that the 20 day time limit is likely to be exceeded in order to assess the public interest test in some cases. CIO CI Access will be notified and branches will then be advised so that the applicant can be informed of progress in the normal way.

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m. The Clearing House may decide that an inter-departmental case meeting is needed. Info-Access will take the lead in ensuring that all relevant MOD parties are present at a mutually agreeable time/date/location with the Clearing House and/or Cabinet Office and the NSLG. The Clearing House may also consult government lawyers and communication specialists.

n. The Clearing House can be expected to involve the MOD, including the relevant policy branch closely in the development of an appropriate response. The Clearing House has a target of 10 working days in which to provide advice on referrals. The advice of the Clearing House will be communicated to CIO CI-Access.

When Clearing House advice is received

o. CIO CI Access will communicate the Clearing House advice to the FOI focal point or branch concerned as soon as practicable.

If the Clearing House advice is disputed

p. There may be potential disputes between the MOD and the Clearing House on advice given. In these cases:

- (1) Branches must inform CIO CI Access immediately who, in turn, will notify the Clearing House;
- (2) If necessary, a submission will be raised containing the full advice given by the Clearing House, the reasons why it is considered that the advice should not be followed and a recommendation to PUS/Ministers as follows:

On disputes regarding the substance of the information concerned by the appropriate level in the chain of command of the branch concerned

On disputes regarding the application of the FOI Act or EIR by the Deputy Director of Information Access

MOJ CLEARING HOUSE TRIGGERS

1. The following is a list of MOJ Clearing House triggers that is divided into three categories of referral to Info Access (for onward transmission to the Clearing House). In all cases, where CIO Info Access have sight of a request and consider that a trigger applies, a Clearing House Referral form (see Appendix 2) will be sent to the branch that is responding to the request, together with a note that will explain that a referral is or may be required. However, it may not be apparent to Info Access that a trigger applies, for example, the s.23 exemption may apply to information within the scope of a request but this may not be apparent from the request, itself. In these cases, it is essential that the request is referred in accordance with the instructions below. It is possible that temporary triggers may have to be put into place. These will be notified via FOI focal points when necessary.

Urgent Mandatory Triggers

2. The following sub-list consists of triggers for categories of requests that must be referred to Info Access urgently (within 1 working day of receipt of the request in MOD). This is either because of the necessity to engage the NSLG at the earliest opportunity or because of the long lead time needed to staff particular categories of requests:

- Requests where the use of the exemption at s.23 (Information supplied by, or relating to, bodies dealing with security matters) may be applicable
- Requests where the use of the exemption at s.24 (National security) may be applicable
- Requests where the use of the exemption at s.27 (information that has been provided by another nation, or international organisation) may be applicable
- Requests relating to MOD security matters
- Requests about cross-Whitehall issues
- Suspected round robin requests

Routine Mandatory Triggers

3. The following sub-list consists of triggers for categories of requests that must be referred to Info-Access within 3 working days of receipt of the request in the branch responsible for responding to it:

Requests that ask for, or relate to:

- Ministerial Diaries
- Requests relating to Number 10
- Cabinet and its Committees, for example, agendas, papers, minutes and meeting dates
- The operation of collective responsibility, for example, inter-Ministerial correspondence and notes of meetings between Ministers
- Cases engaging s.35/36 and the proposed handling differs from working assumptions

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- Select Committee evidence and appearances where information is not already in the public domain
- High likelihood of harmful media interest/story running at the time

Royal Household and Honours

Requests that ask for, or relate to:

- Communications with Her Majesty, other members of the Royal Family or with the Royal Household (First time request/IR to be referred to the Cabinet Office on CH form)
- The conferring of honours (To be referred to the Cabinet Office)

Possible Triggers

4. The following sub-list consists of triggers for categories of requests that may need to be referred, through Info Access to the Clearing House. A Clearing House referral form may be sent to the branch by Info Access, but the branch responsible for responding to the request can decline to refer the case:

Ministerial Issues

Requests that ask for, or relate to:

- The role of Ministers, for example, Ministerial financial interests or propriety issues
- The work of Private Offices
- Correspondence between the UK and Devolved Administrations

Procurement and Efficiency (though local directions may apply)

Requests that ask for, or relate to:

- Gateway Reviews- see MOJ working assumption
- Internal audit reports
- NAO investigations
- Complex and/or high profile procurement projects



Ministry of Justice Central Clearing House

Referral Form

- 1/ **Please complete this form as thoroughly as possible.**
- 2/ **When e-mailing this form to the Clearing House, please copy in all relevant departmental contacts in the e-mail cc. field.**
- 3/ **You should not respond substantively to the applicant, ICO or Tribunal until a Clearing House case officer contacts you, but please continue to process the case. Please refer all correspondence at the earliest opportunity.**

Referring department details and acknowledgement e-mail contacts

Name of department:	
Departmental Case Ref:	

Timeframes and Case History

At what stage is this request? (Please delete as necessary.)	First Request / Internal Review / ICO / Tribunal
Any original Clearing House Refs (first request and/or IR and/or ICO):	
Date communication from applicant/ICO/IT received:	
Deadline for response to applicant/ICO/IT (if applicable):	

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Please confirm that you have attached the following essential documents (tick box):

All communications from/to applicant/ICO/IT (including acknowledgement letters):	<input type="checkbox"/>
Any other correspondence generated since responding to the first request/Internal Review/ICO	<input type="checkbox"/>
The final response to any First Request or Internal Review or any decision notice issued by ICO	<input type="checkbox"/>
Any other key documents inc. any not seen by the Clearing House at the Internal Review/ICO stage	<input type="checkbox"/>

Failure to attach the correspondence requested will result in the return of this referral form

Case details and analysis:

Name / organisation of applicant and exact wording of request:	
<p>Please give an analysis of any immediate considerations that Clearing House should be aware of, beyond those points raised in the attached correspondence.</p> <p>Please give a detailed analysis of the request. You must provide information on:</p> <ul style="list-style-type: none"> • Subject matter and sensitivities. • How the original request was handled/ought to be handled, any applicable exemptions, and why. (If after first request do you believe these exemptions still apply?). • Clearing House triggers engaged. • Department's views on the likely response. • Whether there is a prospect of using NCND. • Whether media interest in the response is likely. • Any other relevant factors. 	
Does/will the National Security Liaison Group (NSLG) have an interest in this case?	

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Contact details of lead departmental FOI practitioner, policy official and lawyer

	Name	E-mail (check accuracy)	Telephone Number	Please check if this is first point of contact for Clearing House
FOI practitioner				<input type="checkbox"/>
Policy official				<input type="checkbox"/>
Lead lawyer				<input type="checkbox"/>

Previous Clearing House advice:

Has Clearing House advised on this request before? If so, please attach details of the relevant advice.	
Are you aware of any reason why the advice should be revisited (e.g. a change in circumstances)? If yes, please give full details .	

Involvement of other government departments and/or NDPBs:

Is this a suspected round robin request?	
If not a suspected round robin, are any other government departments or NDPBs likely to be involved or have an interest in the request?	

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RESTRICTED

Appendix 3

REDACTED IN FULL