

# Handling a request for information

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If you receive a request for an internal review please email the PRIAS [shared mailbox](#) and read the [complaints procedure](#) page.

## 1) Should this be handled as an FOI/EIR request?

1.1) Requests for information fall into three categories:

- **Subject Access Requests** – where requesters are asking for personal data about themselves. These requests are handled by business areas with advice from the Data Protection Team. Please follow the DPA [guidance](#) and forward requests to the Data Protection Team immediately. Please note that any appeals are handled by the [Data Protection Team](#).
- **Routine** – ‘business as usual’ requests, which are handled by the CCU or business area (and are not covered by the guidance on these pages). Any appeals are handled by the business area or CCU.
- **Non-routine** – requests for information which are handled by the business area under the Freedom of Information Act (FOIA) or the Environmental Information Regulations (EIRs). There is further guidance on how to decide whether a request is [non-routine](#).

1.2) It is important to note:

- under the EIRs an oral request by telephone or in person is a valid request; and

- a person making a request does not have to mention the FOIA or EIRs (or does not have to mention the correct legislation) for it to be a valid request. The person just has to ask for the information he/she is seeking and it is the job of the IMR and the business area staff handling the request to determine which legislation a request falls under.

1.3) Although there are some differences between the FOIA and EIRs (particularly in relation to the exemptions/exceptions and deadlines), you should handle requests under these regimes in broadly the same way.

1.4) If you are unsure whether the information would fall under the EIRs, please read through the definition of [environmental information](#).

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## 2) Is this request for my business area?

2.1) Does your business area hold the information requested? If so, then you will need to respond to the request with the help of your [IMR](#).

2.2) If you do not hold the information requested, or are not confident that your team is the most appropriate to respond, it is important that you act quickly – forward the request to the correct business area within Defra or its executive agencies. If in any doubt, you should always contact the business area before sending on the request to ensure that they are willing to accept it, and you should also telephone them to confirm receipt of the request.

2.3) If the request is seeking information from several business areas within Defra, and there is no obvious lead business area, then you must agree among yourselves which business area will co-ordinate the handling of the request, including writing to the requester. If an agreement cannot be reached then please email the PRIAS [shared mailbox](#).

2.4) If Defra or the executive agencies do not hold the information requested but you think another public authority (including arms length bodies in the Defra network) may do so, you should first establish that the other public authority does hold the requested information and that it is willing to take the request. If that is the case, you should write to the applicant promptly using the relevant [online template letter](#) (number 3 or 4).

2.5) There is also a [flow chart](#) for the Intelligence Hub and CCU to follow when forwarding non-routine requests to business areas.

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## 3) Can I respond to this request quickly?

3.1) If the information is already in the public domain (such as recruitment brochures, leaflets, press releases and the text of public speeches), this is a routine query and you would not need to log the request on the tracking system. All you need to do is tell the applicant where it is and how to get it. We do not have to provide for free those publications that are normally priced.

3.2) Please bear in mind that the deadline for dealing with FOI/EIR requests is 20 working days. If you can respond to the requester in a shorter time frame then you should do this, where possible.

## 4) What initial administrative steps do I need to take?

4.1) If you are the first recipient of a request received as a paper letter within Defra and the executive agencies, you must clearly mark the date on the letter. This date is vital as it marks the start of the 20 working day period in which we must reply. Obviously, requests received by email will automatically show the date and time sent, which will serve as the date of receipt.

4.2) Please ensure that your [IMR](#) is aware of the request and that you keep him/her up to date at all stages of handling the request and seek his/her advice/guidance when necessary.

4.3) Please ask your IMR to add the request to the tracking system. Please see the guidance on using the [tracking system](#). You will also need to indicate whether the request falls under the EIRs (please see the definition of [environmental information](#)) or the FOIA.

4.4) You should acknowledge the request as soon as it has been logged onto the request tracking system, by using the [template acknowledgement letter](#).

4.5) If you think the request looks like it could be a ‘round robin’ (i.e. a request that has been sent to one or more other government departments), please check the [Round Robin List](#) issued by the Ministry of Justice (MoJ). If the request is on the list, then please do the following:

- Inform [PRIAS](#) of the request, and they will notify MoJ. PRIAS will also act as the contact point between Defra and MoJ (business areas are not to contact MoJ or CO direct without the agreement of PRIAS).
- If MoJ marks on the round robin list that the request is for departments to deal direct, handle the request as normal. However, you can contact the other departments that have received the request to see how they’re planning to respond. If you do not know who your business area equivalent is in the other departments, please contact [PRIAS](#) who will ask FOI colleagues in other departments to contact you directly. Please note though that in most cases, it is not necessary for departments’ responses to be identical and there is often no problem if departments’ replies are quite different to each other.
- Once your request is on the round robin list, MoJ or the Cabinet Office (CO) may mark on the list that either of them is going to issue guidance/advice on the text of the response to the request is to be issued. Please check the new list daily so that you can apply the guidance/advice as soon as it is issued
- If MoJ or the CO wish to clear departments’ draft responses before they are sent to the requester, please email your drafts to PRIAS for clearance. PRIAS will then forward it to MoJ/CO.

4.6) If you suspect but cannot prove that the requester is using a pseudonym then you must still respond to the request. If an obvious pseudonym is being used, e.g. “Mickey Mouse”, you need not respond. This is based on the [Information Commissioner’s advice](#), which sets

out where the onus to provide proof lies in a number of scenarios. This advice applies only to FOI requests. EIR requests do not require a requester's name for them to be valid. You must respond to EIR requests even where it is obvious that the requester has used a pseudonym. On rare occasions an applicant may use a pseudonym in order to circumvent a designation of "vexatious" or "manifestly unreasonable". Please contact [PRIAS](#) for guidance where you suspect this is the case.

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## **5) Do I need to inform/consult other people about the request?**

5.1) If you have not already done so, please make sure that your [IMR](#) is aware of the request.

5.2) It is important that you consider whether the FOI/EIR request is likely to attract media interest, even if the request is not from a journalist. Likely requests are from journalists or other branches of the media, campaign groups, users of the What Do They Know website, and where the response provides information which can be used to compare performance across Government departments or is on matters that are currently, or are likely to be, high-profile news stories. If so, please inform Press Office as early as possible. The above list is not exhaustive: if in doubt, contact the Press Office – it is better that you inform them of a request and they tell you that they have no interest, than that you don't tell them of a request that ends up on TV and website news bulletins or makes the front page of newspapers.

5.3) Ministers have made clear that they wish to be involved in the consideration of all requests for information relating the policy-making process (e.g. Ministerial correspondence, advice to Ministers including submissions, and notes of meetings with other Ministers, officials or external stakeholders related to policy development). You should immediately forward requests that fall into this category, or in which you think your Minister will have a particular interest, to the relevant Ministerial Private Office, as well as to your [IMR](#).

5.4) If you are considering disclosing information which has a security marking you must refer the request to [PRIAS](#) if the information has national security implications or has been received directly or indirectly from bodies or organisations dealing with security matters. PRIAS will then consult with the MoJ/CO, if necessary. If national security matters are not involved, then security marked information can be released, as long as the disclosure is carefully considered (please see the guidance under question 8 on the application of exemptions/exceptions).

5.5) You should also consult the originating Department of security marked information, where this is not Defra. Please note that, if the originating Department does not agree to the release of the information, they must provide reasons for their view, including details of any FOI/EIR exemptions/exceptions that are relevant and, where applicable, the public interest considerations.

5.6) Where disclosure of information could have direct consequences on third parties it is important to consult the third parties – please see the [guidance](#). Third parties can include: other government departments; devolved authorities; arms length bodies; external stakeholders, etc. However, please bear in mind that, although you are asking for details of

the harm issues that are involved around disclosure of the information, the final decision as to whether the information would be disclosed rests with Defra, even if consultees have expressed objections to disclosure.

5.7) In cases where, despite objections to disclosure expressed by consultees, you and your colleagues determine that the public interest falls in favour of disclosure, you would usually inform consultees of Defra's decision before the disclosure occurs. You should explain why the consultees' objections were not sufficient to enable Defra to withhold the information and, if practicable, ask consultees to raise any further objections before you respond to the request within the deadline.

5.8) You may also need to consult:

- **Procurement and Contracts Function** if considering disclosure of information on contracts and procurement
- **Other business areas within the Defra network** which may have an interest in the outcome of the request
- **Legal advisers** depending on the issues that arise. If you think you may require specialist FOIA/EIRs legal advice, you must first consult your IMR, who will contact [PRIAS](#) to seek this legal advice, if necessary.

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## 6) How long will it take me to gather the information?

6.1) If the request is unclear, or too general (so that complying with it might place a substantial and possibly unreasonable burden on resources), you should contact the applicant as soon as possible, preferably by telephone, to seek clarification.

6.2) Under the FOIA, if the cost of dealing with a request is likely to exceed £600 (which is the 'appropriate limit' for government departments), you should invite the applicant to narrow it down using the appropriate [template letter](#) (number 6) The £600 cost limit is based on an hourly flat rate of £25 per person, which works out at 24 hours of one person's time (i.e.  $600 \div 25 = 24$  hours). Not all activities in handling a request can be included in the cost calculation: the [MoJ guidance](#) explains what activities can be included in the calculation when estimating the cost limit.

6.3) If the time taken to consider exemptions under the FOIA and redactions is a problem, please consult your IMR, as Tribunal cases have established that these activities can be counted as "vexatious". Further guidance on this is in the [January 2013 IMR update](#) in the 'Dealing with burdensome requests' section.

6.4) Under the EIRs you can ask the applicant to narrow down a request if the request is manifestly unreasonable on cost grounds. There is no cost limit for manifestly unreasonable, but the common practice of the Information Commissioner's Office (ICO) is to use the £600/24-hour limit as a starting point for calculating what amounts to reasonable effort. The ICO will generally refer to the list of FOIA activities, but is willing to consider other activities. It will, however, be difficult to count consideration of exceptions, the public interest test and redaction as valid activities.

6.5) You should close the request on the tracking system under ‘Outcome – closed advice and assistance case’, and then choose either ‘12(4)(b) Manifestly unreasonable’ under the EIRs or ‘s12(1) cost of compliance exceeds appropriate limit’ under the FOIA. Open a new entry when you receive the clarified request.

6.6) Under both the FOIA and EIRs, in certain circumstances, public bodies have discretion to charge a fee for complying with a request. Defra has a policy of not charging any fees for information requests. However, the rules on fees do not require us to provide requesters with priced publications free of charge – these can continue to be charged for in the normal way.

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## **7) What do I need to consider when gathering the information?**

7.1) It is important that, as far as possible, you identify and gather all of the information relevant to the request, whether or not you think it is likely to be disclosed. This includes paper files in the office and file stores, emails, personal and shared drives, teamsites and handwritten notes/personal sets of papers (i.e. any recorded information). If personal email accounts, personal mobile phones or personal other electronic devices are used to transmit information on official business, such information is subject to the FOIA and EIRs and must be considered for disclosure.

7.2) Remember that it is a criminal offence deliberately to destroy, conceal or alter information in order to frustrate a request. This includes deliberately trying to conceal official information by using personal email accounts, personal mobile phones or other personal electronic devices.

7.3) Please make sure that you consult all interested parties (see question 5).

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## **8) Does an exemption/exception apply to the information?**

8.1) You need to go through the information and consider whether there are any sensitivities over disclosure, i.e. would disclosure cause harm? If so, then look through the exemptions for FOI requests and exceptions for EIR requests to see if they apply:

- List of [exemptions \(FOIA\)](#)
- List of [exceptions \(EIRs\)](#)
- Detailed guidance – [exemptions](#)
- Detailed guidance – [exceptions](#)
- There is guidance on whether to redact [names of officials](#)
- It is useful to also check the [MoJ working assumptions](#) to see if they cover the request that you are handling

8.2) For exemptions/exceptions that apply, you need to consider the public interest where applicable. All EIR exceptions and most FOI exemptions are subject to the public interest test

(see the FOI exemptions list above for ‘absolute exemptions’ that are not subject to the public interest test). This means that you need to consider, case by case, whether the public interest in withholding the information outweighs the public interest in disclosure. Only where it does can we refuse to disclose.

8.3) It should be borne in mind that a decision not to disclose information today will not automatically lead to the same decision in respect of the same or similar information in the future. The need for confidentiality generally reduces over time. Each request for information should be considered on its merits in the current circumstances, taking account of where the balance of public interest lies.

8.4) If, having considered the above, you propose to refuse a request, it is important that the reasons for the refusal are explained to the applicant in writing as clearly and helpfully as possible, using the [template letters](#). Where relevant, you must explain how the public interest test was applied and the factors that were taken into account. You must also ensure that your IMR has a chance to comment on the draft reply, and send all response letters in PDF format so that recipients cannot see earlier drafts of the reply (please note that if earlier versions of the letter contained sensitive information then you will need to print and scan the letter to ensure that you have protected the information). Attachments, especially spreadsheets, should be sent in formats other than PDF so that they are easily re-usable by requesters and other members of the public.

8.5) Information can be disclosed either in the form of existing documents or by extracting the specific information requested. The legislation gives a right of access to information rather than documents. Therefore, although sending applicants a copy of existing documents will often be the best (and least laborious) approach, there may be circumstances in which it would be necessary to redact (i.e. edit/black out) sensitive information or to identify and extract the relevant text to separate it from information that does not fall within the scope of the request. It is important that redactions are carried out following the [guidance online](#), and that your IMR is clear about precisely what information is being considered for release.

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## **9) How do I respond to the requester?**

9.1) If at any point you need to communicate with the requester to clarify any points of the request, the easiest and quickest way is often by phone. Experience has shown that a phone call avoids email ‘ping-pong’ between Defra and the requester and enables the positions of each party to be understood quickly. After the phone call, you should send an email to the requester to confirm what you agreed so as to avoid any misunderstanding.

9.2) We are under a duty to advise and assist the requester, which includes keeping the requester informed of any delays. Under the FOIA and EIRs, the deadline for response can be extended. Under EIRs the maximum permitted extension is an additional 20 working days and the request can be extended only if it is both complex and voluminous. Under the FOIA requests can be extended by a reasonable time (usually an additional 20 working days) if you are considering the application of the public interest under an exemption where it applies.

9.3) If you decide to send a copy of information to the requester electronically (e.g. by email, on CD, usb etc), you must check that you do not inadvertently include additional and possibly sensitive hidden information (e.g. in the form of tracked changes) that may be recovered by the applicant. To avoid this, you must print and scan any documents that you plan to send electronically to the requester.

9.4) Please ensure that you always use the [template letters](#) when responding to requests, and that your IMR is sent a copy of the draft for comment.

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## **10) What final administrative steps do I need to take?**

10.1) When the final response has been sent, you will need to make sure that you close the case on the tracking system. If any information was disclosed, you will also need to send a copy of the final reply to the [transparency mailbox](#) with the requester's personal data redacted. See the [guidance](#) on sending information to the transparency mailbox, and the redaction [guidance](#).

10.2) File all papers that are relevant to the request. If you are refusing a request you will need to set down in detail, for the record, all issues that you took into account in applying the exemption/exception(s) and weighing the public interest. It is essential to keep such a full record as an audit trail, in case the requestor appeals and you are called on to justify your decisions. You should keep a record and copy of all the information considered in relation to the request, including information that was withheld.

10.3) If a request for an internal review is received, please see the FOI/EIR [complaints procedures](#) for guidance.

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