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FOI POLICY INTERNAL KNOWLEDGE BASE		
FoI or EIR	Section/Regulation	Issue
FOI EIR	s50 reg 18	Drafting DN steps
<p><b>Summary:</b></p> <p>Avoid any steps ordering a PA to disclose or refuse (or just to disclose) "the requested information". Instead, DNs should order a PA to:</p> <ul style="list-style-type: none"> <li>disclose (or refuse) <b>identified</b> information, or</li> <li>issue a fresh response under FOIA or the EIR</li> </ul>		
<p><b>Further Information:</b></p> <p>We need to draft DN steps very carefully to enable clarity over whether the PA has complied with the DN, and allow us to issue a second DN in appropriate cases. In particular, we need to avoid the problem in the <i>Charman</i> case – in other words, we need to ensure that a PA has technically complied with the DN once it provides a response which, on its face, is permitted under the legislation. If so, we can deal with any complaints about new elements of that response as a new s50 case. See the <a href="#">policy summary of Charman</a> for background information.</p> <p>In particular, the <i>Charman</i> problem arises if we order a PA to take steps in relation to "the requested information" (or information otherwise defined by reference to the wording of the request), but we do not yet know whether the PA has correctly identified all information falling within the scope of the request. This means that we cannot be sure whether the step has been taken for all the requested information. Any later dispute about the scope of request, or held/not held, would have to be a DN compliance investigation rather than a new s50 case. This interferes with our internal casework procedures and undermines the parties' rights of appeal to the Tribunal.</p> <p>Instead, steps need to identify the relevant information without referring back to the request itself. DNs should either clearly describe or list the information (eg in an annex), identify it by reference to the PA's actions (eg the information refused under s42, the information the PA identified as falling within the scope of the request), or otherwise order a response without referring to "the requested information".</p> <p>The table below suggests appropriate wording for steps in common types of DNs. This provides a starting point, but case officers should always consider how best to tailor this wording to the individual circumstances of each case.</p>		
Type of DN	Steps	
<b>Non-response</b>	<ul style="list-style-type: none"> <li><b>issue a response under FOIA or the EIR</b> (pick one regime if obvious which applies)</li> </ul>	
<b>Inadequate response</b>	<ul style="list-style-type: none"> <li><b>issue a fresh response under FOIA or the EIR</b> (pick one regime if obvious which applies)</li> </ul>	
<b>Wrong regime</b>	<ul style="list-style-type: none"> <li><b>issue a response under FOIA / the EIR</b></li> </ul>	
<b>Held / not held - inadequate search</b>	<p>We should not generally use a DN in these circumstances. If a PA needs to conduct further searches for information, and a formal step is necessary to progress the case, we should use an IN instead. See also <a href="#">LTT193</a>.</p>	
<b>Rejecting procedural exemptions</b>	<ul style="list-style-type: none"> <li><b>issue a fresh response under FOIA / the EIR without relying on s12 / s14 / regulation 12(4)(b) / regulation 12(4)(c)</b> (delete as appropriate)</li> <li><b>issue a fresh response under the EIR without relying on regulation 12(4)(b), unless engaged on the basis that the costs of compliance would be manifestly unreasonable</b> (if rejecting EIR manifestly unreasonable arguments which are focussed purely on value / purpose of request, but we consider it would be unfair on the PA to prevent them from considering more objective costs arguments)</li> </ul>	
<b>s12 upheld – provide advice and assistance</b>	<ul style="list-style-type: none"> <li><b>provide advice and assistance to enable the complainant to submit a refined request within the cost limit</b></li> </ul> <p>This step can only be included if we have established that the request can actually be refined. And in many cases this can be done as part of the investigation rather than in a DN. Only consider a DN if absolutely necessary to progress the case.</p>	
<b>Rejecting NCND</b>	<ul style="list-style-type: none"> <li><b>confirm or deny whether information falling within the scope of the request is held, and disclose or refuse any information identified</b></li> </ul>	
<b>Fully investigated – ordering disclosure</b>	<ul style="list-style-type: none"> <li><b>disclose specified information</b> (eg listed in annex), or</li> <li><b>disclose the information withheld under sXX</b>, or</li> <li><b>disclose the requested information</b> (only if satisfied that the PA has identified all relevant information)</li> </ul> <p>Note that in fully investigated cases we should generally ensure that the scope of the request is clearly understood and the PA has identified all relevant information. In other words that we are satisfied that on a balance of probabilities nothing further is held. In these cases it may be appropriate to simply order disclosure of the requested information.</p>	
<b>Source of Casework Advice Note</b>	Policy Delivery	<b>Details</b>
<b>Related Casework Advice Notes</b>	<a href="#">LTT187_LTT189_LTT190_LTT192_LTT193</a>	
<b>Related Documents</b>	<a href="#">Tribunal summary: Charman v IC &amp; ODA (EA/2011/0210, 27 April 2012)</a>	
<b>Contact:</b> LS		
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